

## **Civil Infraction Traffic**

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Michigan's New Speed Law  
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## 6.1 Overview

### A. Authority and Definitions

A district court magistrate may hear and preside over traffic civil infraction admission and admission with explanation and conduct informal hearings in traffic civil infraction actions under the Motor Vehicle Code. [MCL 257.746] In exercising the authority under MCL 257.746, the magistrate may administer oaths, examine witnesses, and make findings of fact and conclusions of law.

A district court magistrate may preside over admissions of responsibility with explanation only to the extent expressly authorized by the chief district judge. Michigan law provides that a district court magistrate may conduct an informal hearing if authorized by a district judge to do so and after completing the specified course in traffic adjudication. [MCR 4.401]

If the defendant is determined to be responsible for a traffic civil infraction, the magistrate may impose the civil sanctions authorized by MCL 257.907. [MCL 600.8512]

A **traffic civil infraction** is an act or omission prohibited by law which is not a crime and for which civil infractions may be ordered. For specific violations, points may be assessed by the Secretary of State. [MCL 750.5]

A Local Administrative Order outlining a magistrate's duties is recommended. This order validates the magistrate's authority to handle traffic civil infractions, as well as other duties. An LAO, filed with the State Court Administrative Office, provides the chief judge, the magistrate, and SCAO administrators and analysts a helpful tool in responding to challenges to a magistrate's authority.

### B. Sources of Civil Infraction Traffic Law

In adjudicating a civil infraction traffic case, the magistrate must first make sure that the violation in question is a civil infraction over which he or she has jurisdiction. Next, the magistrate must determine the proper procedural steps to take in processing the case after the officer issues the citation. Ultimately, the magistrate must decide whether the defendant's conduct is in violation of state law or a local ordinance, and impose the proper penalty. In making all of these decisions, the magistrate must consult Michigan's traffic law.

Michigan traffic law should be available in the court's library. Finding Michigan's traffic law can be confusing for the following reasons:

- Both the state Legislature and local governments enact traffic laws so there is no single official compilation of statutes and ordinances that contains all of Michigan's traffic law. A traffic offender may be cited under state or local law, depending on where the offense occurred and what law enforcement agency took action.
- The Legislature has not put all of its enactments on traffic matters into one place. Michigan legislation is organized by broad topical categories, and statutes involving motor vehicles are scattered throughout these categories. Thus, even though the "Motor Vehicle Code" contains most of the "rules of the road," the "Penal Code" contains certain additional serious felonies involving vehicles.
- To some extent, laws describing the elements of Michigan's traffic violations are compiled separately from the laws describing the procedure for adjudicating traffic violation cases.
- In some cases, one statute may describe an offense, and a second statute may describe the penalty for that offense.

Because Michigan traffic law is not located all in one place, the magistrate must consult multiple sources of law in adjudicating a traffic case. The most common sources of law are:

### **1. Michigan Compiled Laws Annotated (MCL)**

A compilation of all the statutes enacted by the Michigan legislature including references to relevant appellate case decisions.

### **2. Michigan Vehicle Code**

A collection of excerpts from the Michigan Compiled Laws that can be obtained for a nominal fee from the Michigan Secretary of State. It is a single unannotated volume containing the Michigan Vehicle Code found in Chapter 257 of the Michigan Compiled Laws (MCL), plus all the other MCL provisions relating to use and ownership of vehicles. This compilation is updated annually.

### **3. Local Ordinances**

A type of law enacted by a local unit of government, such as a city or township. They are a major source of traffic law in many parts of Michigan. Some ordinances deal with subjects not addressed by the Michigan Legislature; others are identical to, or substantially similar to, statutes enacted by the Legislature.

Local ordinances must be consistent with the Michigan Vehicle Code (MVC). Under Michigan law, local ordinances that conflict with the MVC are void to the extent of the conflict. Therefore, many local governments adopt the MVC "by reference," that is, they enact a set of ordinances identical to the MVC.

In addition, local governments may, and do, enact ordinances governing specific areas. Areas that local governments are allowed to regulate include the following: 1) parking; 2) speed regulations; 3) traffic signals; 4) one-way streets; 5) stop or yield signs; 6) turns; 7) use of highways (e.g., restriction to certain vehicles, regulating parades, etc.); and 8) bicycles.

Magistrates should familiarize themselves with the applicable local ordinances in their jurisdiction, because no two sets of local ordinances are exactly the same in format, organization, or numbering system. Ordinance compilations may be obtained from local sources such as courts, public libraries, and city, county, village and township clerks' offices.

Copies of the Uniform Traffic Code are available from the Michigan Department of State Police. Many localities have adopted a model set of traffic ordinances called the Uniform Traffic Code for Cities, Townships and Villages. The Uniform Traffic Code was prepared by the Michigan Department of State Police in the early 1980s and has not been updated.

#### **4. Michigan Court Rules**

The Michigan Court Rules are adopted by the Michigan Supreme Court, and set forth procedural requirements for the Michigan courts. The magistrate should consult the following court rules governing traffic adjudication procedures, the powers of the district judge and magistrate, and recordkeeping requirements for magistrates.

- MCR 4.101, which sets out procedures to be followed in civil infraction cases;
- MCR 4.401, which deals with the district judge's control over the magistrate's duties, responsibilities, and decisions;
- MCR 8.125, which addresses electronic filing of citations; and
- MCR 8.119, which imposes recordkeeping and reporting requirements on magistrates.

## **5. Published Case Decisions**

In published case decisions, the Michigan Supreme Court and Court of Appeals resolve questions not directly addressed by the foregoing statutes, ordinances, and court rules.

Michigan Supreme Court decisions are collected in reporters called the Michigan Reports. Court of Appeals decisions appear in reporters called Michigan Appeals Reports. All Michigan trial courts are required to follow published case decisions by the state's appellate courts.

The Michigan Supreme Court publishes all of its decisions. The Court of Appeals, however, only publishes selected decisions. Michigan's trial courts are only required to follow published decisions by the Court of Appeals. Unpublished Court of Appeals opinions may be considered, but are not binding. [MCR 7.215(C)]

Michigan court decisions are published in a parallel reporter from West Publishing Company, called Northwestern Reporter. When used, the parallel citation always follows the official Michigan Reports or Michigan Appeals Reports citation.

## **6. Attorney General Opinions**

Occasionally, the Michigan Attorney General issues opinions about legal issues that magistrates might encounter. The courts are not required to follow these opinions, but they typically offer helpful guidance. Attorney General opinions are found in a multi-volume set called Report of the Attorney General. Each volume in the set contains opinions issued during a one or two year period. See Appendix in this Section.

## **C. Civil Infraction Traffic Offenses**

As indicated above, there are a number of sources of Michigan traffic law. However, the primary source is the Michigan vehicle code. It is a misdemeanor for a person to violate this act, unless that violation is by this act or other law of the state declared to be a felony or a civil infraction. Unless another penalty is provided in this act or by the laws of this state, a person convicted of a misdemeanor for the violation of this act shall be punished by a fine or not more than \$100.00, or by imprisonment for not more than 90 days, or both. [MCL 257.901(1)]

Uniform Traffic Code provisions will specify whether a given offense is a misdemeanor or a civil infraction. [MCL 257.951]



The decriminalization of minor traffic offenses in 1979 substantially changed the court procedures for handling these cases. Because the defendant in a civil infraction case no longer faces the possibility of going to jail, he or she is no longer entitled to all of the procedural safeguards associated with a criminal trial. Accordingly, civil infraction hearings in traffic cases differ from criminal trials in the following respects:

- Jury trial is no longer allowed. [MCL 257.746(1), MCL 257.747(4)]
- A defendant may be found responsible for a traffic civil infraction by only a preponderance of the evidence, rather than by the criminal standard of proof beyond a reasonable doubt. [MCL 257.746(4), MCL 257.747(5)]
- Because civil infractions are not "crimes," findings of responsibility are not reported on the defendant's criminal record. However, most civil infractions must still appear on the defendant's driving record maintained by the Secretary of State. [MCL 257.6a, MCL 257.732]



## **6.2.1 Commencing a Civil Infraction Traffic Action**

### **A. Issuing Citation**

A civil infraction traffic action may be begun:

1. by a law enforcement officer serving a written citation on the defendant, and filing the citation in the district court;
2. if the infraction is a parking violation,
  - a. by placing a citation securely on the vehicle and filing the citation in the district court,
  - b. by placing a parking notice securely on the vehicle, mailing a citation to the registered owner of the vehicle, and filing the citation in the district court.

The citation, filed with the district court, serves as the complaint. The citation also serves as the summons to command the initial appearance of the defendant and a response from the defendant as to his or her responsibility for alleged violation. [Michigan Uniform Law Citation (form UC-01a)] A single citation may not allege both a misdemeanor and a civil infraction.

[MCR 4.101(A), MCR 6.615(A)(3), MCL 257.727c(1)]

### **B. Michigan Uniform Law Citation**

The Michigan Uniform Law Citation (UC-01a) consists of 6 parts: 3 originals (court copies); 1 police copy; 1 misdemeanor copy; and 1 civil infraction copy. The 3 originals allow an office to cite three violations on a single form. For each violation, the office must file an “original” with the court. Each of the originals shows the court the other violations written, however, the other violations will be shaded to indicate that they are not the charge for this particular “original”.

Each “original” copy of the citation filed with the district court serves as a separate complaint. [MCR 4.401(A), MCL 257.727c] The civil infraction copy given to the driver serves as a summons that brings the driver under the court's jurisdiction and notifies the driver of all the charges regardless of how many originals are filed with the district court. Filing may be electronic pursuant to MCR 8.125.

**C. Proceedings for Non Residents**

When the defendant is not a Michigan resident, special proceedings apply. The citing officer is required by law to take the defendant's license as security for the defendant's appearance in court unless the nonresident leaves either a guaranteed appearance certificate or a sum not to exceed \$100. If the court is open and a magistrate is available, the nonresident may demand to be taken to the nearest magistrate to answer the civil infraction charge. [MCL 257.749]

## **6.2.2 Appearance**

See subchapter 6.3 for procedural checklists.

### **A. Overview**

The defendant must contact the court within the time specified for response in the citation to avoid default. [MCL 257.743(4), MCR 4.101(B)(4)]

The procedure for arranging the appearance date varies from court to court. Some district courts set a specific date for the defendant's appearance; other courts require the defendant to appear on a "walk-in" basis on or before the appearance date specified on the citation. When the appearance date is arranged by telephone, the court may wish to mail to the defendant a notice confirming the appearance.

#### **1. Response to Citation**

All defendants who receive a citation for a traffic civil infraction are required to make an appearance in person, by representation, or by mail. [MCL 257.743, MCL 257.745, MCR 4.101(B)(1)] Upon making an appearance, the defendant or representative must respond to the citation in one of the following ways:

- Admit responsibility, without explanation;
- Admit responsibility with explanation; or,
- Deny responsibility for the civil infraction.

#### **2. Method of Appearance**

##### **a. In Person**

Appearance in person is made when the defendant personally appears in court to admit responsibility. Appearance by representation is made when a defendant authorizes another person to come before the court and admit responsibility on the defendant's behalf. The defendant's representative need not be a licensed attorney.

Once an appearance date is set, the defendant is required to appear, either in person or by representation. Default will also be entered against defendants who fail to appear at scheduled hearings. [MCL 257.748, MCR 4.101(B)(3)] Defaults are discussed in 6.2.2, F, pages 25 through 27. The contact with the court to schedule an appearance date does not itself constitute an appearance. [MCR 4.101(B)(2)]

**b. By Representation**

New magistrates should inform themselves about their courts' practices regarding appearances by representation. A defendant need not give another person written authorization to act on his or her behalf, but the magistrate may ask for written authorization or a written admission of responsibility if the circumstances surrounding the representative appear questionable.

Once an appearance date is set, the defendant is required to appear, either in person or by representation. Default will also be entered against defendants who fail to appear at scheduled hearings. [MCL 257.748, MCR 4.101(B)(3)] Defaults are discussed in 6.2.3, pages 25 through 27. The contact with the court to schedule an appearance date does not itself constitute an appearance. [MCR 4.101(B)(2)]

**c. By Mail**

Appearance by mail is made when the defendant returns the citation to the court with a signed admission of responsibility, and/or full payment of the applicable fines and costs. [MCL 257.743(4)] If payment is not enclosed, the court may order appropriate sanctions as described in MCL 257.907, and notify the defendant of the amount due and the payment deadline. In any event, the court must comply with the notice requirements in MCL 257.321a.

**3. Type of Response****a. Admission of Responsibility without Explanation**

A district court magistrate may accept an admission of responsibility for a civil infraction without explanation, and order sanctions, if the magistrate is so authorized by the district judge. [MCL 600.8512, MCR 4.101(D)(1)] If the defendant admits responsibility without explanation, the magistrate finds the defendant responsible for the infraction and imposes the appropriate sanctions. [MCL 257.745]

**b. Admission of Responsibility with Explanation**

A magistrate may accept a written or verbal admission of responsibility with explanation only as expressly authorized by the district judge. [MCL 600.8512, MCR 4.101(D)(2)] Therefore, it is essential that the magistrate obtain the necessary authorization to preside over admissions of responsibility with explanation. When the explanation is offered by representation, the court may require the defendant to offer further explanation and/or appear in court in person.

**c. Denial of Responsibility**

A case involving a defendant who denies responsibility for a civil infraction may be adjudicated at a formal or informal hearing. Most contested cases are heard and decided at informal hearings. A formal hearing occurs when the defendant expressly requests one, or when one of the parties appeals a decision rendered after an informal hearing.

The defendant shall request a hearing by contacting the court in person, by mail, by telephone or by representation to obtain a scheduled hearing date. If a hearing date is scheduled by telephone, the court shall send a written notice confirming the hearing date.

**4. Timeliness of Appearance**

The defendant's appearance must occur within the time specified on the citation. Failure to make a timely appearance will result in entry of a default judgment against the defendant. [MCR 4.101(B)] Noncompliance with the judgment will result in eventual suspension of the defendant's license, as well as other possible sanctions. [MCL 257.743(4)] The timeliness of a mail appearance is determined by the postmark date of the defendant's letter.

**B. Admission of Responsibility with Explanation, Appearance in Person or By Representation**

There are a number of steps to be conducted in an admission of responsibility with explanation in person or by representation. The magistrate must make certain determinations with regard to some of these steps. See Section 6.3.1 for a procedural checklist. The steps involved in accepting an admission of responsibility with explanation in person or by representation include:

- checking the citation for material defects;
- reading the charges and explaining the responses;
- determining whether the defendant has admitted responsibility;
- evaluating defendant's explanation; and,
- entering judgment.

## **1. Material Defects**

### **a. Defined**

The citation must be checked for material defects. A material defect is an error pertaining to a fact that is necessary to prove an element of the offense, or that attacks the essence of the complaint. (See subchapter 6.2.5, C.2, page 46 and MJJ's Traffic Benchbook, vol. 2, sec. 1.8 as last updated.) Courts vary in their opinion as to what constitutes a material defect, and new magistrates should check with their chief judges regarding this issue. Material defects may include:

- No signature on the citation by the citing officer. [MCL 257.742(1)] The absence of a signature is a material defect that makes the entire citation invalid.
- Incorrect identification of the defendant.
- Incomplete identification of the offense.
- Failure to specify the location of the offense.
- Failing to specify the date of the offense, or entering an incorrect date.

### **b. Court Policy**

New magistrates should also ask their chief judges what to do if a citation contains a material defect. The case may be dismissed without prejudice by the judge or magistrate (if the magistrate is authorized to do so), and the citing officer may issue a new citation. A new citation must be served on the defendant. The court should have a clear policy regarding proof of service.

### **c. Discrepancies**

A citation may contain a discrepancy between the officer's written description of the offense and the statute or ordinance section number, or there may be a written description with no section number given. Another possible discrepancy is that the section number might indicate one offense, but the defendant's explanation may contain facts that make you think another offense should be charged.

One approach to this problem would be to schedule an informal hearing in which testimony from both sides can be heard. After hearing testimony from both sides, the magistrate could allow the officer to amend the citation. Another approach would be to dismiss the citation without prejudice and permit the officer to reissue it with appropriate corrections.

Magistrates should not amend a citation themselves without authorization from the citing officer.



## **2. Reading Charges and Explaining Responses**

The magistrate should read the charge(s) from the citation, and ask whether the defendant understands the charge(s). If the defendant does not fully understand, the magistrate must explain further to make the charge(s) clear. Once the defendant or defendant's representative indicates an understanding of the charge(s), the magistrate should explain the possible responses to the charge(s) (admission, admission with explanation, and denial), and again ask the defendant how he or she wishes to respond.

Because defendants are often confused about the difference between an admission with explanation and a denial, the magistrate should make sure that the defendant understands that an admission with explanation will not result in dismissal of the citation; only a denial may lead to this result. If a defendant ends up denying responsibility, the magistrate must schedule a formal or informal hearing. [MCR 4.101(E)(2)]

Some defendants admit responsibility and accept sanctions only to dispose of the matter quickly. There is nothing wrong with this; however, a magistrate should make clear the options that are available.

If multiple offenses are listed on a multi-charge citation, the magistrate should ask if he or she has appeared to respond to the other charges. If the defendant has not appeared on the other charges, the magistrate should explain that a separate response is necessary for each charge. Defendants sometimes assume incorrectly that a single appearance will suffice for each charge on a multi-charge citation.

## **3. Determining Whether Defendant Has Admitted Responsibility**

### **a. Defined**

A defendant's admission of responsibility with explanation consists of an admission of responsibility for the offense charged and an explanation of the circumstances surrounding the offense.

A defendant who responds to a citation with an admission of responsibility with explanation admits committing a civil infraction, but requests that the sanctions should be mitigated because of extenuating circumstances. The court must enter a finding of responsibility, and decide whether the defendant's circumstances warrant mitigation of the sanctions.

The magistrate determines whether the facts the defendant admits are the elements that constitute the charged offense and considers any mitigating circumstances related in the explanation. Upon consideration of the explanation, the magistrate decides whether to accept the defendant's admission, and may impose the appropriate sanctions. The magistrate may mitigate the sanctions against the defendant in light of his or her explanation. [MCL 257.745(4)] See subchapter 6.3, starting on page 85.

**b. Consulting Law**

In deciding whether the defendant is admitting facts constituting responsibility for an infraction, the magistrate must consult the statute or ordinance that creates the infraction. This statute or ordinance will describe the particular factual elements that comprise the infraction. The elements of all the traffic offenses in the Michigan Compiled Laws are listed in MJJ's Traffic Benchbook as last updated. See also subchapter 6.2.5, A, page 37.

**d. Admission to Correspond with Factual Elements**

The facts contained in the defendant's admission of responsibility must correspond with the factual elements described in the statute in order to establish that the defendant committed the infraction. For example, the elements of coasting, a civil infraction under MCL 257.678(1) are: defendant drove a motor vehicle on a down grade; and, at that time, defendant coasted with the gears of the vehicle in neutral. Before a defendant can be sanctioned for coasting, the behavior to which he or she admits must have been consistent with both of these elements.

**e. Missing Elements**

If a defendant purports to admit responsibility, yet the facts he or she admits to don't amount to the facts that constitute the offense, the magistrate should inquire further about the missing elements. If further inquiry does not resolve the issue, or if the police officer's testimony is needed, the magistrate should schedule a formal or informal hearing.

**f. Factors which Excuse Responsibility**

In some cases, the defendant's behavior may meet the statutory elements for an infraction, but other circumstances offered in explanation constitute a defense to the infraction that would excuse the defendant entirely from responsibility. The statute governing admissions with explanation, read strictly, does not allow the magistrate to enter a not-responsible judgment or dismiss the citation in such cases. [MCL 257.745(3)-(4)]

One possible solution is to again remind the defendant of his or her right to deny responsibility and to request an informal/formal hearing. The magistrate should reach a clear understanding with his or her chief judge about what to do in this situation.

The magistrate should distinguish between explanations that mitigate the defendant's circumstances and justify a reduction in sanctions, and explanations that contest the elements of the offense or otherwise excuse the defendant from responsibility. The latter type of explanation should alert the magistrate to the need for an informal hearing on the issue of the defendant's responsibility.

See subchapter 6.2.5, A. 3, page 39 for a discussion on situations where the defendant contests the elements of the offense or offers an excuse from responsibility.

#### **4. Evaluating Defendant's Explanation**

Once the magistrate has determined that the defendant has admitted responsibility for the charged infraction, he or she must decide whether to accept the defendant's explanation, and consider reducing the applicable sanctions. Michigan law does not provide clear guidelines for evaluating a defendant's explanation, or for mitigating the civil sanctions imposed when a defendant is found responsible.

Although magistrates rely on their own experience and sense of justice in evaluating defendants' explanations, each magistrate should have an understanding with the chief judge about the court's policies to reduce sanctions for admissions with explanation.

In evaluating a defendant's explanation, the magistrate may consider the following factors:

##### **a. The Defendant's Basic Knowledge About Driving**

The magistrate should be reluctant to mitigate sanctions when the defendant's explanation does not reflect a basic knowledge of:

- the basic rules of the road;
- the additional care and caution required in inclement weather or other hazardous traffic conditions; and,
- the necessary precautions to take when driving trucks, motor homes, or motorcycles, or when towing vehicles.

Some magistrates will mitigate the fine and cost upon satisfactory completion of a driver safety education program, if such a program is available in their jurisdiction.

**b. The Defendant's Credibility**

Magistrates should also be wary of statements that do not appear credible under the circumstances, for example: 1) an unsubstantiated claim of a sudden health emergency; 2) an unsubstantiated lack of familiarity with the area where the offense occurred; or, 3) an unsubstantiated claim of an inaccurate speedometer.

The above claims might justify a mitigation in sanctions if the magistrate is satisfied that they were made truthfully. The magistrate must often rely upon his or her "gut" feeling about the defendant when assessing credibility.

Other factors to consider, however, are the defendant's ability to corroborate his or her explanation with documentation or other credible witnesses, the defendant's current driving record, and whether the defendant's explanation offers good faith reasons for his or her behavior, rather than excuses.

**c. Relevance of the Explanation**

The defendant's explanation must also relate to the elements of the charged infraction. Even a credible explanation offered in mitigation of a defendant's behavior will not justify a reduction in sanctions if it is irrelevant to the charged infraction. Some defendants offer "explanations" that do not relate to the facts of the incident, such as:

- complaints about the citing officer's discourtesy;
- concerns about losing the driver's license;
- concerns about repair expenses;
- concerns about lost time from work;
- claims of a clean driving record; or,
- concerns about increased insurance premiums.

These sorts of "explanations" may merely be appeals to sympathy that do not justify mitigated sanctions. The magistrate should give the defendant a reasonable opportunity to "blow off steam." In the case of the discourteous officer, the magistrate might suggest to the defendant that he or she take the complaint to a more appropriate forum, such as the citing officer's police chief or the jurisdiction's governing board.

#### **d. Emergencies**

Where the defendant claims that he or she violated the law in response to an emergency, the magistrate should consider whether the defendant could have avoided the "emergency" situation by more careful behavior. For example, a magistrate may be reluctant to mitigate sanctions where the defendant was speeding to avoid being late for an appointment; if the defendant scheduled the appointment in advance, he or she should have also allowed enough time to drive to it, or taken other action to avoid having to violate the law.

A true emergency, if it involves extraordinary, unexpected circumstances outside the defendant's control, may operate as a complete excuse from responsibility. See subchapter 6.2.5, A, 3, page 40 on the "doctrine of sudden emergency." Where the "emergency" does not meet the criteria for this doctrine, it might nonetheless justify a mitigation of sanctions.

The decision to mitigate sanctions is a matter of discretion, for each magistrate to decide on an individual basis. Magistrates may reasonably differ as to what types of circumstances justify mitigation. Factors to consider include:

- The extent to which the driver might have been able to anticipate the emergency if he or she had been driving at a prudent speed, or a safe following distance.
- The extent to which a distraction would interfere with a normal person's ability to focus on driving.
- The driver's awareness of his or her surroundings.

### **5. Enter a Judgment**

When the defendant has admitted responsibility for the offense, the magistrate should, after evaluating his or her explanation, enter a judgment that finds him or her responsible for the citation and impose the appropriate sanction. See subchapter 6.2.6, pages 69 through 78 for details on sanctions. If the magistrate does not mitigate the sanctions, then the usual sanctions are imposed. If, on the other hand, the magistrate finds the defendant's explanation worthy of consideration, he or she may decide how much the defendant's sanctions may be reduced from the recommended fines and costs schedule.

**a. Refusing Admission**

When, after hearing the defendant's admission and explanation, the magistrate determines that the defendant has denied responsibility, the magistrate should refuse to accept the admission as stated, and have the case scheduled for an informal hearing as if the defendant had denied responsibility.

**b. Mitigating Sanctions**

The magistrate has no authority to mitigate the sanctions against the defendant by amending the charged offense so that the driver will get fewer points. If, for example, a defendant charged with driving 45 mph in a 30 mph zone (a 3 point offense) admits to driving 40 mph (a 2 point offense), the magistrate should treat defendant's statement as a denial and schedule an informal hearing.

**c. Assessing Fines and Costs**

The magistrate has no authority to assess a fine or costs without entering an accompanying finding of responsibility, and in appropriate cases, abstracting the judgment for the Secretary of State.

**d. Preparing Order**

The magistrate's judgment is entered on SCAO Approved form CIA 02 (Judgment) or by way of a computerized form. The original judgment should be filed with the court, and a copy given to the defendant.

**e. Abstract**

Mitigation of sanctions does not amount to a dismissal of the citation. Thus, if the infraction is one that must be placed on a defendant's driving record, the court must still send an abstract of the judgment to the Secretary of State upon a finding of responsibility, regardless of the sanctions imposed.

Because the Secretary of State is required by statute to assess violation points on the defendant's driving record, the court has no authority to reduce the number of points the defendant will receive for an offense. See MCL 257.732, MCL 257.320a.

### **C. Admission of Responsibility with Explanation, Appearance by Mail**

When the defendant timely appears by mail, the magistrate may accept the admission with explanation as if the defendant had appeared personally in court. However, if the defendant's mailed explanation is unclear, or if it does not clearly admit responsibility, the magistrate may require the defendant to provide further explanation at a court appearance. [MCL 257.745(2),(4)]

There are a number of steps to be conducted in an admission of responsibility with explanation by mail. The magistrate must make certain determinations with regard to some of these steps. See Section 6.3.2, page 87 for a procedural checklist. The steps involved in accepting an admission of responsibility with explanation by mail include:

- examining the case file;
- checking the citation for material defects;
- determining whether the defendant has admitted responsibility;
- evaluating defendant's explanation; and,
- entering judgment.

#### **1. Examining the Case File for Completeness**

##### **a. Contents**

The case file will contain the court copy of the citation (consisting of either paper or an electronic file with data from the citation), and the defendant's letter of explanation, accompanied by the defendant's signed civil infraction copy of the citation. The file might also contain a copy of the defendant's driving record, or, if the defendant is an out of state driver, the bond card or driver's license given as security under MCL 257.749. On out of state drivers, see also subchapter 6.2.1, C, page 8.

##### **b. Examine Appearance Date**

In reviewing the case file, the magistrate should first examine the appearance date. If the defendant's letter of explanation is not postmarked by that date, a default judgment of responsibility may be entered. [MCL 257.743(4), MCL 257.748] See subchapter 6.2.3, pages 25 through 27 for defaults and 6.2.8, page 81 for noncompliance with judgments.

**c. Failure to Respond Timely**

Court practice varies as to whether the magistrate or the court's clerical staff enters a default judgment against a defendant who fails to timely respond to a traffic citation. Court practice also varies as to when a default judgment will be entered

**d. Court Policy for Defaults**

The magistrate is responsible for establishing the policy for entering defaults, in conjunction with the district judge. In courts with automation, defaults are produced automatically after the expiration of the time for response. In such courts, the magistrate should not consider a defendant's untimely letter of explanation if the case file also contains a judgment of default.

**2. Checking the Citation for Material Defects**

See the discussion on page 12 of this subchapter. After checking for material defects, the magistrate should compare the contents of the mailed explanation with the citation. The magistrate should verify that the letter and the citation refer to the same offense and offender, and to the same time, location, and offending vehicle. The defendant should sign his or her copy of the citation. If a defendant mails a copy of the citation to the court without signing it, yet provides a letter of explanation, the magistrate should check the chief judge's policy to determine what action to take.

**3. Determining Whether the Defendant Has Admitted Responsibility**

Once the magistrate has found that the case file is complete, he or she should determine whether:

- the defendant is admitting facts that constitute responsibility for the offense; and,
- the defendant is offering an explanation in mitigation of the civil sanctions.

See pages 15 through 17 of this subchapter for a discussion of principles to follow in making these determinations.

**4. Evaluating Defendant's Explanation**

Mailed admissions of responsibility with explanation pose special problems not present where the defendant or representative for the defendant appears before the court. Defendants are usually not attorneys; they are not trained or experienced in the legalities of admissions, denials, or admissions with explanation.



A defendant's explanation may be ambiguous, or the written admission with explanation may fall short of the legal requirements for an admission. The defendant may not understand the difference between an admission with explanation and a denial, and may send the court a written defense to the infraction with the expectation that the court will render a decision on responsibility. In these situations, the magistrate does not have the advantage of the defendant's presence in the hearing room to answer clarifying questions.

Where the defendant's admission with explanation is unclear or defective, the magistrate has the following options, depending on the court's time and staff constraints, and the district judge's preferences:

- Mail a notice to appear in court regarding the letter of explanation.
- Mail the defendant a judgment of responsibility, informing him or her of the right to appeal.
- Schedule an informal hearing.
- Send the defendant a letter of non-acceptance of the admission with explanation, advising the defendant to submit a revised response to the citation by a stated time deadline. The letter should also inform the defendant of the particular sanction that may be imposed, and of the consequences of failure to reply within the time deadline.

## **5. Entry of Judgment**

After evaluating a mailed explanation, the magistrate should prepare a judgment to be sent to the defendant.

If the defendant sent payment with his or her mailed explanation, the payment should be applied to the fine and cost upon entry of judgment. If a balance is still owed, the mailed judgment should indicate the balance due. If the payment is too much, the excess amount should be deposited into the court's bond account, and the difference refunded by mail. [Michigan Court Administration Reference Guide, 6-05-09, F.4.]

The magistrate should determine the court's policy regarding situations where the defendant includes payment with the mailed explanation, and the explanation results in the scheduling of an appearance or hearing. The court may either: 1) return the check with the notice to appear; or, 2) deposit the payment to the bond account pending the outcome of the hearing.

## **D. Denial of Responsibility**

A case involving a defendant who denies responsibility for a traffic civil infraction may be adjudicated at a formal or informal hearing. Most contested traffic cases are heard and decided at informal hearings. A formal hearing occurs when the defendant expressly requests one, or when one of the parties appeals a decision rendered after an informal hearing.

### **1. Formal Hearing**

Under MCL 257.747, formal hearings in traffic civil infraction cases must be conducted by the district judge. The judge decides whether to find the defendant responsible for the infraction, applying a preponderance of the evidence standard. Each party may be represented by an attorney, but the defendant is not entitled to appointed counsel at public expense. There is no jury at a formal hearing.

### **2. Informal Hearing**

#### **a. Authority to Conduct**

Under MCL 257.746, informal hearings in traffic civil infraction cases may be conducted by a district judge or a district court magistrate. Before conducting an informal hearing, however, the magistrate must be authorized to do so by the district judge, and complete a traffic adjudication course in accordance with MCL 600.8512(2).

#### **b. Procedural Standards**

An informal hearing is similar to a formal hearing in that no jury is empaneled; also as in a formal hearing, a preponderance of the evidence standard is used to decide whether to find the defendant responsible. The procedural rules applicable to a formal hearing do not pertain to an informal hearing, however. Except with regard to privileged communications (such as the attorney/client or doctor/patient privilege), the magistrate is not bound to follow procedural rules such as the Michigan Rules of Evidence, and no verbatim record is required. Neither party may be represented by an attorney at an informal hearing. A magistrate may administer oaths, examine witnesses and make findings of fact and conclusions of law.

### c. Conduct of Hearing

In general, the atmosphere surrounding the informal hearing allows for greater latitude to parties and witnesses. Nonetheless, the magistrate should keep in mind that informal traffic hearings are many citizens' only experience with the court system. A traffic case that seems routine to a magistrate may be a matter of great concern to the person who has requested a hearing. It is thus important that the magistrate control the proceedings, and treat both parties fairly, with courtesy and respect, no matter how routine the case may seem to the magistrate. Magistrates must also seek to make informal hearings understandable to those who appear, and to provide reasons for their decisions. The hearing shall be conducted in an informal manner so as to do substantial justice according to the rules of substantive law.

See 6.2.5. Adjudication, page 38 regarding the preponderance of the evidence standard. For a procedural checklist and script on conducting hearings, see subchapters 6.3.3 and 6.3.4, pages 89 through 94.

## E. Taking Judgments Under Advisement

The magistrate's authority comes from statute, court rule, and the chief judge, in that order. A judge has no power to authorize a magistrate to do anything that is not permitted by statute or court rule.

**No Michigan statute or court rule permits a court to take a traffic civil infraction case "under advisement" for a period of time for the purpose of dismissing the violation if the driver receives no further citations.** In the September, 1990 Mich-ellaneous Memo, the State Court Administrative Office made the following statement regarding the practice of taking civil infraction case "under advisement:"

"Some courts have a practice of taking civil infraction cases 'under advisement' when an offender admits responsibility. While there appears to be no statutory authority to provide for this practice, it is very common in some courts while not allowed in others. This situation results in confusion for litigants and leads to a perception that all citizens do not have access to equal justice.

"Some courts limit taking civil infractions under advisement to special cases. Other courts have allowed the process to become so common that the officer (when issuing the citation) or the court clerk (when the offender contacts the court) advises the offender that he or she may request an admission to be taken under advisement.

"This practice, regardless of the intentions, negatively impacts the accuracy and integrity of Michigan driving records. Under this procedure, no conviction abstract is submitted to the Department of State. If the offender is not convicted of additional offenses for a specified time period, the citation is dismissed. Consequently, a driver may have several violations under advisement in different courts, or in some cases the same court, and eventually have all of the citations dismissed because no violation was ever submitted for entry to the driving record. As a result, a problem driver could remain on the road with an unblemished driving record.

"While the judiciary has broad discretion over procedural matters, implementation of practice and procedure is controlled by the Michigan Court Rules. To date, neither the Michigan Court Rules nor statute provide for this procedure. Standards relating to driving privileges and traffic safety are set by the Legislature. We recommend that courts discontinue the use of the 'under advisement' procedure.

"Courts are urged to review the following statutory provisions regarding this matter: MCL 257.6b; MSA 9.1802(2); MCL 257.8a; MSA 9.1808(1); MCL 157.732; MSA 9.2432; MCL 257.745; MSA 9.2445; MCL 257.746; MSA 9.2446; MCL 257.747; MSA 9.2247; MCL 257.907; MSA 9.2607."

Since publication of this article, the State Court Administrative Office has become aware of programs similar to taking matters under advisement but known by other terms such as audit, deferred judgment, informal probation, dismissal with costs, and administrative review.

### **6.2.3 Failure to Appear**

If a driver fails to respond to a traffic citation or to appear for a scheduled hearing, the magistrate may enter a default determination of responsibility. This determination will include the imposition of sanctions. However, the defendant may move to set aside the default for good cause upon timely application and posting of bond.

#### **A. Entering Default Judgment**

##### **1. Authority**

If a defendant fails to respond to a traffic citation or to appear for a scheduled hearing, the magistrate may enter a default determination of responsibility, and impose appropriate sanctions. [MCL 257.748, MCR 4.101(B)]

Prior to the entry of a default judgment for failure to respond to a citation the magistrate must determine whether the plaintiff has filed an affidavit stating whether the defendant is in the military. The check box on the citation is sufficient for this purpose. If the citation indicates the defendant is on active duty in the military service a default judgment cannot be entered until the court appoints an attorney to represent the defendant, unless the servicemember has waived his or her rights and protections under the Servicemembers Civil Relief Act, *50 USCS Appx 501, et. seq.*

The court must initiate procedures to prevent default judgments when a citation indicates a person is on active duty in the military. If a default judgment is entered, the defendant may file a motion to set aside the default and provide proof to the court that he or she is on active military duty.

##### **2. Sanctions**

Failure to answer a citation or a notice to appear in court for a traffic violation can also result in license suspension. Moreover, such failure is a misdemeanor. [MCL 257.321a(1)] The district judge and/or prosecuting attorney (but not the magistrate) will decide whether to prosecute the defendant for this misdemeanor offense. No additional cost may be added at time of default for seat belt violations, MCL 257.710e, or a substantially corresponding local ordinance. For details on sanctions see subchapter 6.2.6, page 69.

##### **3. Costs to Compel Appearance**

The court may assess costs to compel appearance. [MCL 257.729]

#### **4. Court Policy**

Magistrates inevitably face the question of what to do about "no-shows." Defendants and police officers may arrive late or fail to appear at a scheduled informal hearing. Therefore, the magistrate should consult with the district judge to develop a clear, no-exceptions policy under which parties who arrive more than a given number of minutes late are considered no-shows. When one party appears and the other one does not, the magistrate should advise those present of the time by which the absent party must appear.

#### **5. Process**

When the defendant fails to appear for a scheduled hearing, follow the steps in MCR 4.101(B)(4) and then dismiss the citing officer and any witnesses who appeared. Before dismissing these persons, it is good practice to explain what procedures the court will follow against the defendant who is in default. Under MCR 4.101(B)(4), the court:

- must enter a default against the defendant;
- must make a determination of responsibility, if the complaint is sufficient;
- must impose a sanction by entering a default judgment;
- must send the defendant a notice of the entry of the default judgment and the sanctions imposed; and
- may retain the driver's license of a nonresident as permitted by statute, if the court has received that license pursuant to statute. The court need not retain the license past its expiration date.

Upon entry of a default judgment, the magistrate should turn the court file over to the court employees who are responsible for sending the defendant the notices required by law and for processing the necessary paperwork.

#### **B. Setting Aside Default Judgment**

In some instances, a defendant may have a legitimate excuse for failing to answer the citation or attend the hearing. Under MCR 4.101(C)(1), the defendant may request the court to have the default judgment set aside.

##### **1. Motion**

The defendant's request must be made within 14 days of the day on which the court sends the notice of default. The request may either be in writing, or presented to the court in person, and must explain the reason for the defendant's failure to appear. The request must also state that the defendant wants to offer a defense to or explanation of the complaint and must be accompanied by as cash bond equal to the fine and costs due at the time the motion is filed. [MCR 4.101(C)]

A defendant may request that a default be set aside on SCAO Approved form CIA 04, Motion to Set Aside Default Judgment and Order.

## **2. Setting Aside the Judgment**

Once the defendant has filed a timely request to have the default set aside, a judge may set the default aside "for good cause" under MCR 4.101(C)(2)(a). If the judgment is set aside, an informal hearing on the charge should be scheduled unless a party expressly requests a formal hearing.

If the default has already been abstracted, the court should notify the Department of State to remove the conviction. If the defendant is later found responsible after hearing, a new conviction abstract should be submitted.

## **3. Hearing on Motion**

Alternatively, the judge, for "good cause," may require the clerk to schedule an informal hearing on the defendant's motion, under MCR 4.101(C)(2)(b).

## **4. Untimely Request**

An untimely request to set aside a default must comply with additional requirements set forth in MCR 2.603(D). Defendants may wish to seek legal advice to determine whether they are able to meet the additional requirements of this court rule.

## **C. Failure to Appear by Plaintiff**

If the plaintiff fails to appear, the case shall be dismissed. Whether or not the defendant appears is irrelevant to this action. The plaintiff may motion the court to set aside the dismissal, appeal to circuit court, or file a new citation for same offense (with proper service on the defendant).





### **6.2.4 Informal Hearing**

The magistrate has a duty to maintain control over the proceedings during an informal hearing. Following the steps outlined in this subchapter will assist the magistrate in maintaining control, and will help to ensure that the hearing is conducted fairly. See subchapters 6.3.3, 6.3.4, and 6.3.5, starting on page 89 for a checklist, worksheet, and script to assist in properly conducting informal hearings.

#### **A. Facilities and Environment**

During an informal hearing, the magistrate should maintain a dignified and judicial environment. The magistrate should wear standard business attire and eliminate personal items from the hearing room, such as family pictures. The ideal hearing room should contain the following:

- A work area for parties and witnesses that includes a calendar and a magnetic board with model cars or chalkboard and writing implements;
- A seating area for parties and witnesses;
- Separate seating areas for spectators and for parties awaiting scheduled hearings;
- A raised bench for the magistrate;
- The United States and Michigan state flags, and a Michigan state seal; and,
- A copy of the Michigan Vehicle Code and municipal traffic ordinances.

#### **B. Information Sheet**

The magistrate may want to develop an informal hearing information sheet and send it to defendants who have a hearing scheduled. Such a sheet would contain information to help defendants understand what to expect at their hearings. A sample information sheet is found in subchapter 6.3.5, page 95. This document was adapted from material developed by several district courts.

#### **C. Conducting the Hearing**

##### **1. Examine the Case File**

The first step in conducting an informal hearing is to examine the case file and determine whether it is complete.

- The file should contain the citation; a copy of Form CIA 01, Notice to Appear, that corresponds to the citation for the case (court personnel should have sent this notice to each party in advance); and a copy of Form CIA 02, Judgment.
- In addition, the case file may contain a copy of the defendant's driving record. To avoid prejudice, the driving record should not be reviewed prior to the hearing.

## **2. Check for Material Defects**

After examining the file for completeness, the magistrate should check for material defects in the citation. See subchapter 6.2.2, B, page 12 for minimum standards.

## **3. Determine Elements of Infraction**

Finally, the magistrate should determine the elements of the alleged infraction that the police officer must prove by a preponderance of the evidence to support a finding of responsibility. See subchapter 6.2.5, A, page 37 on establishing the elements of an offense. During the parties' testimony, it is helpful for the magistrate to take notes that document testimony related to each element of the offense. These notes may then be used to establish a preponderance of the evidence. See subchapter 6.3.3, page 95 for a copy of the worksheet.

## **4. Call the Case**

The informal hearing begins when the magistrate calls the case. The defendant will appear in person and the plaintiff (the State of Michigan, a city, village, or township) will be represented by a police officer. To verify that all persons connected with the case are present at the hearing, the magistrate should ask the officer, defendant, and any witnesses who are present to please step forward.

### **a. Failure to Appear**

If the defendant fails to appear, the magistrate should enter a default judgment. If the citing officer fails to appear, the magistrate may either adjourn (i.e., postpone) the case, or dismiss the citation. See 6.2.3, pages 25 through 27 for details.

### **b. Ethical Conduct**

Magistrates should not socialize with police officers anywhere in view of the public before the start of a scheduled hearing. Parties who perceive that the magistrate has a social relationship with the officer may also perceive that the magistrate's decision will be biased in the officer's favor.

## **5. Explain the Proceeding**

Once the magistrate is satisfied that the parties and witnesses are present, the magistrate should introduce himself or herself, and identify the defendant and officer. The magistrate should next tell all present, in plain English, what will happen. Some of the items to be explained include the following:

- The proceeding is an informal hearing.
- The purpose of an informal hearing is to determine whether the defendant is responsible for a civil traffic infraction.
- Each side will have the opportunity to be heard.
- After the citing officer has testified, the defendant will testify about the facts relating to the incident, and offer a defense.
- The magistrate will decide the case after hearing all relevant testimony and applying the appropriate traffic law.
- A preponderance or majority of the evidence is required to find the defendant responsible. See subchapter 6.2.5, A, 1, b, page 38 for details.
- The possible civil sanctions include a civil fine, costs, and perhaps alternate sentencing such as treatment, education, or rehabilitation. A jail sentence is not a possible sanction.
- Either party may appeal if dissatisfied with the magistrate's decision.

## **6. Read the Traffic Complaint**

### **a. Complaint Information**

After explaining what an informal hearing is, the magistrate should read the complaint information aloud, exactly as it appears on the citation, including:

- The citation number;
- The name of the defendant;
- The date and time of the alleged incident; and,
- The location and description of the alleged offense.

**b. Defendant Response**

The defendant may allege at this point that there is an error in the citation. Many defendants believe that any error in the citation makes the citation invalid, no matter how minor the error is. The magistrate (who would have checked the citation for material defects prior to the hearing) should explain that the only defects that affect the validity of a citation are material defects, that go to the essence of the charge. See subchapter 6.2.2, B. page 12 on material defects.

**c. Applicable Statute or Ordinance**

Next, the magistrate should read the applicable statute or ordinance. The magistrate must be satisfied that the defendant understands the charge and confirm that the defendant denies responsibility. Often, defendants belatedly realize that they committed the infraction and may admit responsibility. If this happens, the magistrate need not hear testimony because the proceeding becomes either an admission of responsibility or admission with explanation. The magistrate may dismiss any witnesses and the citing officer, and proceed to entering judgment with just the defendant present.

**d. Inquire Whether Ready to Proceed**

If the defendant still wishes to deny responsibility, the magistrate should ask the parties if they are ready to proceed with the hearing.

**7. Administer the Oath**

Before taking testimony, the magistrate must administer the oath to the parties and witnesses. The parties and witnesses may take the oath as a group. The magistrate instructs the group to raise their right hands while the oath is administered.

**8. Take Evidence****a. Officer's Evidence**

The magistrate may begin by asking the citing officer to present the evidence in support of his or her case. The officer's evidence may be in the form of verbal testimony, physical evidence (such as skid mark measurements), or documents (such as photographs). The officer's evidence should be confined to facts relevant to the elements of the offense. See also subchapter 6.2.5, A and B, pages 37 through 45.

Testimony about the defendant's attitude toward the officer, for example, is not relevant to the elements of most civil infractions, and should be prohibited. After the officer has finished presenting evidence, the magistrate may ask the officer questions to clarify elements of the alleged infraction.

**b. Defendant's Questions**

Once the officer's presentation is concluded, the magistrate should ask the defendant if he or she has any questions for the magistrate to ask the officer or the officer's witnesses. The defendant must not be allowed to argue with the officer.

To maintain control of the proceedings, the magistrate should tell the defendant to direct questions to the magistrate who will, in turn, conduct the actual questioning of the officer or the witnesses. The magistrate must ensure that the defendant's questions are relevant and not argumentative. The magistrate may wish to remind the parties that courtroom etiquette applies, even though the hearing is informal.

**c. Defendant's Evidence**

The magistrate should ask the defendant to present his or her case. Like the officer, the defendant may present verbal testimony, physical evidence, or documents. The defendant is probably less experienced in testifying than a police officer, so that his or her evidence is more likely to be disorganized, unfocused, or irrelevant to the main issues of the case. The magistrate will often need to question the defendant after his or her presentation.

**d. Treatment of Defendant**

The magistrate should be sensitive to the defendant's inexperience, and make every effort to maintain an atmosphere of dignity, decorum, and impartiality. At the end of the defendant's presentation, the magistrate should ask whether the officer has any questions for the magistrate to ask the defendant or the defendant's witnesses.

To avoid arguments arising between the defendant and the officer, the officer's questions should be directed to the magistrate, who in turn will question the defendant. If the magistrate still requires more facts to decide the case after hearing the testimony, he or she should question the parties.

## **9. Decide the Case**

After hearing the testimony and asking questions, the magistrate should assess whether each element of the officer's case has been established by a preponderance of the evidence, and reach a decision. See subchapter 6.2.5, page 37. for more on the reasoning process involved in deciding a case. In announcing his or her decision, the magistrate should:

- Recite the facts not in dispute;
- Explain how he or she has resolved the disputed facts;
- Apply the facts to the appropriate traffic law;
- Announce whether or not the defendant is responsible for the infraction; and,
- Give reasons for the decision.

## **10. Impose Sanctions**

### **a. Finding of Not Responsible**

A magistrate who finds a defendant not responsible should dismiss the defendant and anyone else who is still in the hearing room.

### **b. Finding of Responsible**

A magistrate who finds the defendant responsible must impose civil sanctions immediately. Since sanctioning is a matter that concerns only the magistrate and the defendant, the officer and any witnesses may be excused for this stage of the hearing, if they wish to leave.

If the officer or witnesses remain in the hearing room while the magistrate imposes sanctions, they should be advised that they have no opportunity to argue the sanction once it is imposed. The officer has no right to contest the sanction.

The defendant's driving record, if available, may be reviewed at this time. The magistrate may consider the defendant's current driving record, plus any aggravating or mitigating circumstances, in imposing civil sanctions. See subchapter 6.2.6, page 69 on sanctions.

**c. Advice About Failure to Comply with Judgment**

Whatever sanctions are imposed, the magistrate should advise the defendant that failure to pay fines and costs or complete a rehabilitation or service program may result in a misdemeanor conviction, possible suspension of one's driver's license, and even punishment for contempt of court. See subchapter 6.2.8, page 81 on the consequences of noncompliance with a judgment.

**d. Advice About Licensing Sanctions**

If asked about points on the driving record, the magistrate should advise defendants that points are assessed by Secretary of State (not the district court), after the Secretary of State receives notice that a driver has been found responsible for a civil infraction. A magistrate may not withhold reporting of convictions or adjust the number of points assessed. See subchapter 6.2.6, D, page 74.

**D. Complete Case Processing**

After deciding a case, the magistrate should ensure that SCAO Approved form CIA 02 (Judgment) is completed, with a copy given to the defendant and the original filed with the court. The magistrate's involvement in the case ends when the defendant is dismissed from the hearing room.

Once the day's proceedings are concluded, all case files should be returned to the court clerk.

The court clerk is responsible for preparing judgment abstracts, and sending Form DSI-22, Abstract Report of Court Order and Record of Conviction, to the Secretary of State. [MCL 257.732]





## **6.2.5 Adjudication**

A magistrate's primary duty in adjudicating a traffic civil infraction case is to determine whether to find the defendant responsible for the offense. The magistrate makes this finding by consulting the state statute or local ordinance governing the charged offense, and determining whether the defendant's conduct corresponds to the particular elements that comprise the offense.

### **A. Establishing Elements of Traffic Case**

The elements of an offense are the factual criteria that must be met to prove that the defendant has committed it. The elements of a civil traffic infraction can be established either in the defendant's admission of responsibility given in response to a citation, or in an informal hearing.

#### **1. Burden of Proof**

##### **a. Presenting Evidence**

##### **1) Plaintiff**

The citing officer must present evidence proving that the defendant committed a given traffic offense. At an informal hearing on a civil infraction, the plaintiff (usually the citing officer) presents his or her evidence first, because the plaintiff has the burden of proof to establish responsibility. To meet this burden, the plaintiff must present evidence establishing each element of the charged offense. These elements constitute the plaintiff's *prima facie* case. Black's Law Dictionary (5th Edition, 1979) defines a "prima facie case" as one that will entitle a party to recover if no evidence to the contrary is offered by the opposite party.

If the plaintiff does not prove each element of the charged offense, the magistrate must enter a finding of non-responsibility in favor of the defendant.

If the plaintiff presents a *prima facie* case at the informal hearing, the magistrate should find the defendant responsible if the defendant offers no evidence whatsoever. Defendants usually present evidence in their defense at an informal hearing, however.

##### **2) Defendant**

When the citing officer has finished his or her presentation of evidence, the magistrate must allow the defendant an opportunity to present his or her evidence before making any decision in the case.

If the defendant has a defense to a traffic violation charge, the defendant must present evidence supporting that defense. The obligation to establish an element of or a defense to a violation of law is known as the burden of proof.

A defendant's evidence will either contradict the facts presented to establish the plaintiff's prima facie case, or raise an excuse from responsibility not present in the prima facie case.

#### **b. Preponderance of the Evidence**

In considering the evidence presented by both parties at an informal traffic civil infraction hearing, the magistrate should render a decision that is supported by a preponderance of the evidence. [MCL 257.746(4)] When the evidence shows that a fact is more likely than not consistent with a party's description of it, that fact is said to be established by a preponderance of the evidence. Black's Law Dictionary, (5th Edition, 1979). A preponderance of the evidence is sometimes expressed as a 51% showing that the evidence is consistent with a party's version of the facts.

The burden of proof by preponderance of the evidence in civil infraction cases is much different than the burden of proof beyond a reasonable doubt in criminal cases. The prosecution bears a much heavier burden of proof in criminal cases than does the plaintiff in civil infraction cases. To establish a fact beyond a reasonable doubt, the trier of fact must be entirely convinced of it, to a moral certainty. Black's Law Dictionary, (5th Edition, 1979).

### **2. Basic Elements of Traffic Offenses -- The Plaintiff's Case**

- a. As basic elements of all traffic offenses, the magistrate must be sure that the plaintiff can:
  - 1) identify the vehicle;
  - 2) identify the driver;
  - 3) establish that the alleged violation took place on a public highway (some traffic violations may occur in other locations. See, for example, careless and reckless driving on pages 64 through 67 of this subchapter);

- 4) establish that the alleged violation occurred within the jurisdiction of the officer and the political subdivision that enacted the statute or ordinance at issue; and
  - 5) establish that the alleged offense took place within the magistrate's jurisdiction.
- b. Intent to violate the law is another basic element to consider in adjudicating traffic offenses, particularly those that are criminal. Most traffic civil infractions do not require intent to violate the law as an element of the offense. One exception to this general statement is driving on private property to avoid a traffic signal. [MCL 257.611] A magistrate can find a driver responsible for exceeding a posted speed limit, for example, without finding that he or she did so intentionally. See MCL 257.627. However, criminal misdemeanor offenses may often require intentional conduct by the defendant. See e.g., MCL 257.626; (Reckless driving); MCL 750.382(2) (Malicious destruction of trees, shrubs, etc. with a vehicle); MCL 257.625(2) (Authorizing or knowingly permitting another to operate a motor vehicle while intoxicated). The magistrate should consult the statute or ordinance governing the offense to decide whether intent is an element. If an offense requires intentional conduct on the part of the defendant, the statute or ordinance will often describe the prohibited behavior as "wilful," "knowing," or "malicious."

Note: To establish the element of intent, the plaintiff must show that the defendant intended to commit the acts that constitute the violation of law. It is not necessary to establish that the defendant knew that his or her intentional conduct was prohibited by a particular provision of law.

The foregoing elements should be considered with regard to any Michigan traffic offense. Pages 46 through 67 of this subchapter will discuss the additional elements required for four common traffic offenses. The additional elements of other Michigan traffic offenses can be found in volume 1 of MJT's Traffic Benchbook as last updated.

### **3. Excuses from Responsibility -- The Defendant's Case**

The defendant in a traffic case may escape responsibility if he or she can show that an element of the plaintiff's case is lacking. For example:

#### **a. Incorrect Operation of Speed Measuring Device**

A defendant in a speeding case may prove that the citing officer was not correctly operating the device that measured the defendant's speed.

**b. Obscured Sign or Signal**

A defendant cited for disobeying a traffic sign or signal may show that the sign or signal was obscured by rust or vegetation, or inoperative due to theft, vandalism, or mechanical failure. Requirements for proper sign posting are found in the Michigan Manual of Uniform Traffic Control Devices, available from the Department of Transportation, Traffic and Safety Division, 425 West Ottawa, Lansing, Michigan 48913, (517) 373-2831.

**c. Doctrine of Sudden Emergency**

- 1) The defendant may also raise new issues that are not already present in the elements of the prosecution's case. In certain limited circumstances, the doctrine of sudden emergency operates to excuse a driver from responsibility for a traffic violation. In Socony Vacuum Oil Co v Marvin, 313 Mich 528, 546; 21 NW2d 841 (1946), Walker v Rebeuhr, 255 Mich 204, 206; 237 NW 389 (1931), and Paton v Stealy, 272 Mich 57, 62; 261 NW 131 (1935), the Supreme Court expressed the doctrine as follows:

"One who suddenly finds himself in a place of danger, and is required to act without time to consider the best means that may be adopted to avoid the impending danger, is not guilty of negligence if he fails to adopt what subsequently and upon reflection may appear to have been a better method, unless the emergency in which he finds himself is brought about by his own negligence."

- 2) Note that the doctrine of sudden emergency applies only in extraordinary, unexpected circumstances that arise through no fault of the defendant. The circumstances must be both unusual and unexpected to trigger the exception. Vander Laan v Miedema, 385 Mich 226, 232; 188 NW2d 264 (1971). In Amick v Baller, 102 Mich App 339, 341-341 (1980), the Court of Appeals explained "extraordinary" and "unexpected" as follows:

"[T]he factual pattern is 'unusual' if the facts present in the case vary from the everyday traffic routine confronting a motorist. Thus, a blizzard or other extreme weather condition may cause such an unusual driving environment that the normal expectations of due and ordinary care are modified by the attenuating factual conditions. 'Unsuspected' facts are those which may appear in the everyday movement of traffic, but which take place so suddenly that the normal expectations of due and ordinary care are again modified by the attenuating factual conditions."

3) The Michigan Court of Appeals has made the following additional statements about the doctrine of sudden emergency.

- Vsetula v Whitmyer, 187 Mich App 675, 681-682; 468 NW2d 53 (1991):

In this case, a collision occurred when the defendant was attempting to enter a road from her driveway on a winter day. She was unable to stop her car at the end of the driveway because it skidded on an unseen patch of ice and slid into the road. Earlier in the day, there had been no ice on the defendant's driveway. The Court of Appeals ruled that the sudden emergency doctrine was applicable to this case.

- Young v Flood, 182 Mich App 538, 542-544; 452 NW2d 869 (1990):

Failure to stop in the assured clear distance is not excused by hitting an icy spot, where the driver has reasons to suspect icy spots and adjust speed to be able to stop. However, a driver may be excused if he or she is driving at a prudent speed for icy conditions, and loses control of the vehicle due to a sudden unseen, unsuspected patch of ice. For another case involving ice, see People v Jones, in Section 5.6(B)(1).

- Hill v Wilson, 209 Mich App 356, 358 (1995); 531 NW2d 744:

The sudden emergency doctrine did not excuse the negligence of a motorcyclist who collided in heavy traffic with the vehicle in front of him, when that vehicle stopped suddenly to avoid hitting a family of ducks and another car braking for the same ducks. The Court stated: "Far from being a sudden emergency, we find the phenomenon of motorists being forced to make unanticipated stops is a common occurrence during rush hour."

- Wright v Marzolf, 34 Mich App 612 (1971); 192 NW2d 56:

The doctrine of sudden emergency is applicable where there is evidence that an emergency existed within the doctrine's meaning. In this case, the doctrine applied where a child suddenly darted into the street before the defendant driver from in front of a parked car.

- Spillars v Simons, 42 Mich App 101, 105-106; 201 NW2d 374 (1972):

In this rear-end collision case, the defendant (who drove the following car) claimed that the collision was caused by the lead car's failure to signal for a left turn. The Court of Appeals found that this was not the type of unexpected emergency that would bring the sudden emergency doctrine into play. The Court of Appeals stated:

"Not every difficulty that a motorist encounters is a condition that will excuse his liability [under the sudden emergency doctrine]. The condition must be extraordinary and totally unexpected."

- Vander Laan v Miedema, 22 Mich App 170, 178; 177 NW2d 457 (1970), reversed on other grounds 385 Mich 226 (1971):

In this rear end collision case, the defendant (driving the following car) claimed he collided with the car in front of him because it stopped while he was looking in the rear view mirror. The Court of Appeals found that this case presented no unexpected or extraordinary condition that would excuse violation of the assured clear distance and rear end statutes. Drivers should stay behind other vehicles at such a distance as will permit a quick look into the rear view mirror without a collision if the other vehicles should suddenly slow or stop.

## **B. Applying the Law to the Facts -- Evaluating the Evidence**

Once the magistrate has identified the elements of a traffic offense from the statute or ordinance that creates the offense, he or she must carefully listen to the parties' renditions of the facts, looking for facts that match the elements of the offense. This can be a difficult task in an informal hearing, since the parties are not represented by attorneys who understand that adjudication involves a process of applying facts to statutory criteria. [MCL 257.746(1)]

The parties may present the magistrate with numerous facts that have no relevance at all to the elements of the charged offense, and the magistrate must be familiar enough with these elements to discern which facts are important to his or her decision and which are not.

The parties may also present the magistrate with evidence that is not reliable. While the magistrate is not bound by the Michigan Rules of Evidence in an informal hearing, certain principles from these rules are useful to the magistrate in deciding what weight to give the evidence that the parties present. [See MCL 257.746(2)]

## **1. Relevance**

Magistrates should not base their decisions on evidence that is not relevant to the charged offense. Michigan Rule of Evidence 401 defines "relevant evidence" as:

"...evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."

In plain English, this Rule lists two components for relevant evidence.

- a. The evidence pertains to a fact that impacts on the magistrate's decision; and,
- b. The evidence makes the existence of that fact more or less probable than it would be without the evidence.

Applying the foregoing criteria to speeding offenses, (see C. on page 36 of this subchapter on speeding offenses) evidence relevant to determining whether a driver's speed was reasonable under Michigan's basic speed law could include such factors as weather, time of day, vehicle type, traffic volume, road surface, and sight limitations. The color of defendant's car, or the attitude of the citing officer are not relevant to this determination.

## **2. Establishing the Reliability of Evidence Presented**

Evidence at an informal hearing may take the form of testimony by the defendant, the complaining officer, or nonparty witnesses, who will verbally explain what happened as it pertains to the charged offense. The parties may also introduce physical evidence. Car parts, speed measurements, and skid marks are forms of physical evidence. Finally, documents (e.g., registration certificates, repair receipts, cancelled checks, photographs) may be presented as part of the evidence in a civil infraction hearing. The following discussion describes briefly some factors a magistrate should consider in assessing the reliability of these types of evidence.

### **a. Evaluating Testimony of Witness**

#### **1) Competency of Witness**

When evaluating the testimony of a witness, one factor the magistrate should consider is whether the witness is competent to make the statements offered into evidence. A magistrate should not give much weight to a witness's testimony that is not based upon the witness's personal knowledge. [See Michigan Rules of Evidence 601,602]

In an accident case, for example, the magistrate should consider whether the witness was standing in a place from which he or she could view the accident clearly, or whether any conditions existed that would have impeded the witness's ability to see the accident. See Hicks v Bacon, 26 Mich App 487, 493-494; 182 NW2d 620 (1970).

## 2) Distinguishing Between Perception and Statement of Opinion

The magistrate should also distinguish between a witness's description of some fact perceived and a statement of opinion. A witness does not need to be an expert in traffic matters to give an opinion, but if opinion testimony is given, the magistrate should inquire into the perceptions that form the basis for the opinion, and consider whether the opinion is reasonable in light of the witness's perception. [See Michigan Rule of Evidence 701] In questioning police officers about evidence pertaining to traffic offenses, magistrates should inquire as to the officer's training and expertise. Frequently, officers will appear in court having observed vehicles that have fallen (fall speeds), vaulted (flip-vault speeds), rolled over (tip-over speeds), or failed to negotiate curves (yaw, sideslip and other critical curve speeds), and based on this, have made a speed determination. Such speed determinations are valid only if the officer has the proper training and experience to support them.

The Michigan appellate courts have made the following statements about opinion testimony, in the context of speeding: (speeding is discussed in C. on page 36)

- Stehouwer v Lewis, 249 Mich 76, 81; 227 NW 759 (1929); Hicks v Bacon, 26 Mich App 487, 493; 182 NW2d 620 (1970):

A witness need not qualify as an expert in order to testify as to matters learned through ordinary observation, such as rate of speed at which vehicle is going, provided the witness is fully interrogated as to knowledge upon which judgment is based.

- Hinderer v Ann Arbor Railroad Co, 237 Mich 232; 211 NW 734 (1927); Jackson v Trogan, 364 Mich 148; 110 NW 612 (1961); Hicks v Bacon, 26 Mich App 487, 494; 182 NW2d 620 (1970):

"Estimates of speed based solely on opinions of the force of impact are not admissible."

- Parks v Gaudio, 286 Mich 133; 381 NW 565 (1938); Green v Richardson, 69 Mich App 133, 140; 244 NW2d 385 (1976):

"An opinion of the speed of a vehicle based on sound alone is properly excluded as evidence."



**b. Evaluating Documentary Evidence**

When evaluating documentary evidence, the magistrate should make sure that the document is properly identified, and that no questions are raised as to its authenticity. See Michigan Rules of Evidence 901 - 1007 for guidance on authenticating documents.

**c. Evaluating Defendant's Admission of Fact**

A defendant's admission of a fact to a police officer may be considered reliable, particularly where the fact admitted is against the defendant's interest. The Michigan appellate courts have said:

- People v Chandler, 75 Mich App 585, 590; 255 NW2d 694 (1976):

Admissions made to a police officer by the driver of an automobile involved in an accident are admissible in any court proceedings.

**d. Evaluating Scientific Tests or Measuring Devices**

When evaluating evidence gathered from scientific tests or measuring devices, the magistrate should seek to establish whether the test or measuring was performed in such a way as to render accurate results. See Section 6.7 of the New Magistrate Traffic Adjudication Manual for a full discussion of the guidelines that must be met in order to allow into evidence speed readings from a radar speed measurement device. On laser speed measurement devices, see Section 7.6 of the New Magistrate Traffic Adjudication Manual.

References in versions of the New Magistrate Training Manual published prior to 2000 regarding certification of radar units by the Michigan Speed Measurement Task Force (MSMTF) are no longer accurate. MSMTF now allows speed measurement device manufacturers to certify that each new device sold in Michigan has been tested to the standards specified by the MSMTF. These manufacturers will now be required to perform the testing for their equipment for certification rather than having an independent laboratory perform the tests, as was previously the case.

- People v Strawcutter, 259 Mich App 142; 673 NW2d 469 (2003):

The court ruled that People v Ferency, 133 Mich App 526, does not mandate any specific actions in regard to service of the radar unit beyond that the speedometer be serviced by the manufacturer or other professional as recommended. The court said in Ferency that the guidelines “can be met by a showing that the issuing officer followed the recommendations contained in the Interim Guidelines and other recommendations issued by the Office of Highway Safety Planning.”

## **C. Speeding Offenses**

### **1. Purpose of Speed Laws**

The purposes of speed control laws are to move as many vehicles as possible safely, and to promote uniform vehicular speeds. While studies have shown no direct correlation between number of accidents and rate of speed, drivers who travel at rates of speed that deviate--either faster or slower--from the average rate of speed of surrounding traffic increase the probability of accident involvement. Speed control laws are also important because the severity of injuries is directly related to rate of speed.

### **2. Elements of a Speed Violation**

In addition to the elements common to all traffic offenses (see page 38 of this subchapter), the elements of a speed violation case are:

- defendant operated a motor vehicle on the highway; and,
- the speed of the vehicle was in violation of the Michigan Vehicle Code or local ordinance.

Intent is not an element of any civil infraction based on speeding.

#### **a. Material Defect**

The citation for a speeding violation shall specify the speed at which the defendant allegedly drove, and the speed limit at the location where the violation allegedly occurred. [MCL 257.633(1)] Speeding citations that do not meet this statutory requirement have a material defect. See subchapter 6.2.2, B, page 12 on material defects.

#### **b. Basic Speed Law - Speed Limit Defined**

With regard to speed limits, Michigan's basic speed law provides as follows:

"A person driving a vehicle on a highway shall drive at a careful and prudent speed not greater than nor less than is reasonable and proper, having due regard to the traffic, surface, and width of the highway and of any other condition then existing. A person shall not drive a vehicle upon a highway at a speed greater than that which will permit a stop within the assured, clear distance ahead." [MCL 257.627(1)]

Under the basic speed law, all drivers must drive so that: 1) their speed is careful and prudent under the road conditions; and, 2) they can stop within an assured clear distance ahead.

The basic speed law does not provide any specific speed limit for traffic in Michigan. The Legislature has, however, supplemented the basic speed law with numerous specific statutory limits for Michigan traffic. The statutes containing these specific speed limits are not well organized, and can thus be very confusing to read.

### **c. Types of Speed Limit**

It is helpful to realize that the MVC supplements the basic speed law with two different types of specific speed limits:

- 1) Conclusive speed limits (sometimes called "absolute" or "unqualified maximum" speed limits); and,
- 2) Prima facie speed limits.

#### **3) Conclusive Speed Limit**

If a driver violates a conclusive speed limit, he or she has no defense to the charge, other than to challenge the accuracy of the citing officer's speed measurement. If the officer proves by a preponderance of the evidence that the driver's speed exceeded a conclusive speed limit, evidence of the prudence of that speed or the ability to stop is irrelevant to a determination of responsibility. On the burden of proof, see page 37 of this subchapter.

#### **4) Prima Facie Speed Limit**

Drivers who violate a prima facie speed limit may raise the defense that their speed was careful and prudent under the circumstances, in accordance with the basic speed law.

Statutes imposing a prima facie speed limit will contain such language as "it is prima facie unlawful for a person to exceed the speed limits..." Statutes imposing a conclusive speed limit will have statements such as "...shall not exceed the speed of...."

The remainder of this subchapter will describe the above concepts in more detail.

### 3. Careful and Prudent Speed

Underlying the concept of careful and prudent speed in the basic speed law is the premise of ordinary care, i.e., the rate of speed which the average person would conclude to be proper, considering all conditions. Magistrates should recognize that speed limits are arbitrarily designated by authorities in law enforcement and traffic engineering. Speed limits are reasonable only for the conditions for which they are set, typically, optimum conditions such as fair weather and off peak traffic volumes. When posted speed limits are not reasonable, most drivers will ignore them.

#### a. Factors

When deciding whether a driver was traveling at a careful and prudent speed, the magistrate should consider such factors as:

- 1) weather (rain, wind, snow, etc.);
- 2) time of day (daytime vs. nighttime);
- 3) road surface (rough, wet, icy, etc.);
- 4) sight limitations (hills, curves, parked cars, etc.);
- 5) traffic volume (pedestrians, other types of vehicles); and,
- 6) vehicle type (braking capacity, stopping distance).

#### b. Relevant Case Law

The Michigan Supreme Court has made the following comments about "careful and prudent speed."

- Patterson v Wagner, 204 Mich 593, 602 (1919):

"The rate of speed of an automobile must always be reasonable and proper, having due regard to existing conditions at the time and place, the lives and safety of the public being the test."

- Bade v Nies, 239 Mich 37, 39 (1927):

The driver of an automobile must drive his car in a reasonable safe manner. It may be necessary to drive at a lesser speed than the maximum allowed by law.

- Szost v Dykman, 252 Mich 151, 153; 233 NW 203 (1930):

The driver of an automobile may be negligent in driving at a speed that is unreasonably slow.

- Dempsey v Miles, 342 Mich 185, 192-193; 69 NW2d 135 (1955):

A motorist may be guilty of negligence in driving too fast even though keeping within the statutory limit. Drivers must have regard for the situation, and operate their vehicles accordingly.

#### **4. Assured Clear Distance**

##### **a. Factors**

The concept of assured clear distance ahead in the basic speed law is typically applied to accident cases because the collision itself is evidence of the inability to stop within a clear distance ahead. The ability to stop as a measurement of speed is contingent on several factors, including:

- 1) driver's perception and reaction time;
- 2) road surface conditions; and,
- 3) vehicle's braking capacity. See D. 2, page 56 of this subchapter on evidence of stopping distances.

##### **b. Relevant Case Law**

The Michigan Supreme Court has made the following comments with regard to assured clear distance ahead:

- Buchel v Williams, 273 Mich 132, 137; 262 NW 759 (1935):

"The 'assured clear distance' rule is not confined...to the ability to observe fixed objects ahead; it includes moving objects as well."

- Marek v City of Alpena, 258 Mich 637, 642; 242 NW 793 (1932):

The rule that a driver must drive at such a speed that he can stop within the assured clear distance ahead does not apply to objects that are a part of the roadway, such as holes or bumps.

- Thompson v Southern Michigan Transportation Co, 261 Mich 440, 446-447; 246 NW 174 (1933):

Atmospheric conditions (e.g., fog) do not change the rule that drivers should have their vehicles under control so that they can stop within the range of their vision. If a driver's vision is obscured, he or she must slow down so as to be able to stop if necessary.

- Hoag v Fenton, 370 Mich 320, 325-326; 91 NW2d 848 (1963); Cole v Barber, 353 Mich 427 (1958); Barner v Kish, 341 Mich 501; 67 NW2d 693 (1954):

A motorist who has been driving so as to be able to stop within what had been his assured clear distance ahead is not in violation of such rule where such distance is suddenly and unexpectedly invaded by another vehicle coming from the side at a time and place such that the first driver cannot avoid a collision with it.

- Lett v Summerfield, 239 Mich 699 (1927); Russell v Szczawinski, 268 Mich 112, 116; 255 NW 731 (1934):

"[I]t is negligence...to drive an automobile...in the dark at such speed it cannot be stopped within the distance that objects can be seen ahead."

- Meehl v Barr Transfer Co, 296 Mich 697, 701; 296 NW 844 (1941):

"The duty of so driving as to have assurance of safety ahead is imposed by the law of the road and exacts no higher degree of care than that of the common dictates of prudence."

### **c. Rear End Collision**

If the accident at issue involves a rear end collision, MCL 257.402 governs, as follows:

"(a) ...when it is shown by competent evidence, that a vehicle traveling in a certain direction, overtook and struck the rear end of another vehicle proceeding in the same direction, or lawfully standing upon any highway within this state, the driver or operator of such first mentioned vehicle shall be deemed prima facie guilty of negligence....

(b) This section may not be invoked by the owner of any vehicle, the rear of which was struck under the circumstances above mentioned, if the accident occurred between 1 hour after sunset and 1 hour before sunrise, and the vehicle so struck did not, at the time, have a lighted lamp or lantern reasonably visible to the drivers of vehicles approaching from the rear."

#### **d. Prima Facie Evidence**

##### **1) Finding**

A collision occurring under the circumstances described in this statute is prima facie evidence of negligence on the part of the driver of the vehicle overtaking and striking another vehicle from the rear. Prima facie evidence means that this evidence alone, if uncontested by the defendant, meets the preponderance of the evidence standard set forth in MCL 257.746(4). On burden of proof, see A. 1, page 27 of this subchapter. Unless the defendant can produce other evidence that contradicts the prima facie evidence, the magistrate must enter a finding of responsibility against the defendant for failing to stop within the assured clear distance.

##### **2) Relevant Case Law**

In Hill v Wilson, 209 Mich App 356, 360-361; 531 NW2d 744 (1995), the Court of Appeals considered whether an abrupt stop by the lead vehicle is sufficient to contradict the prima facie case for negligence against a following vehicle that collides with it under MCL 257.402. In the Hill case, a motorcyclist traveling in heavy traffic was injured when his vehicle struck the car in front of it, which had braked for a family of ducks crossing the road. The Court of Appeals ruled that the sudden braking of the lead vehicle in this case did not contradict the prima facie presumption that the motorcyclist was negligent under the rear end statute. Finding the motorcyclist negligent, the Court of Appeals stated that parties driving in heavy traffic where sudden stops could be reasonably expected should drive in the anticipation that unexpected events may cause drivers ahead to slow down or stop.

## **5. Conclusive Speed Limits**

### **a. Defined**

As noted in C. 2. of this subchapter, page 46, conclusive speed limits are maximum speeds set in advance for certain types of areas and vehicles. "Conclusive" speed limits are also sometimes referred to as "absolute" or "unqualified maximum" speed limits. In the MVC, a statute imposing a conclusive speed limit will contain language stating that the motorist "shall" not exceed a given speed.

### **b. Finding**

If the officer proves that a motorist was exceeding a conclusive speed limit, the magistrate must conclude that the motorist is responsible for a speed violation. The magistrate may not consider the motorist's argument that his or her speed was careful and prudent under the circumstances according to the basic law. The motorist's only defense when charged with violating a conclusive speed limit is to dispute whether a valid speed reading was obtained by the complaining officer.

### **c. Conclusive Speed Laws**

There is no requirement that speed limit signs be posted in the case of conclusive speed limits. The conclusive speed laws are as follows:

- 1) 45 mph for construction survey and work areas. [MCL 257.627(9)] A different speed limit set by a local authority may apply, if it is posted. Effective June 25, 1996, MCL 257.601b doubled the fine for a moving violation at a construction zone, school zone, or emergency scene.
- 2) 50 mph for a person driving a school bus (55 mph on a limited access highway or freeway). [MCL 257.627(7), MCL 257.627b]
- 3) 55 mph for vehicles pulling trailers over 750 lbs. [MCL 257.627(5)]
- 4) 55 mph for tractors, trucks, combinations weighing over 10,000 pounds. (35 mph when reduced loadings are being enforced.) [MCL 257.627(6)]



- 5) 55 mph on all highways upon which a maximum speed limit is not otherwise fixed. [MCL 257.628(1)] A county road commission or the state transportation commission and the state police may jointly determine that this speed is not safe for a particular county highway or state trunkline highway, and set a different speed, which will be effective when posted.
- 6) Except as otherwise provided in MCL 257.628, 65 mph on all freeways. The state transportation department, however, may designate not more than 170 miles of freeway on which the speed limit may be less than 65 mph. [MCL 257.628(5)]

MCL 257.628(5), as amended by 1996 PA 320, also established five 70 mph test zones on Michigan freeways. Based on study results, certain miles of freeway were increased to 70 mph. All 70 mph zones are set as absolute speed limits based upon Traffic Control orders written by the Department of Transportation in conjunction with the Michigan State Police. For more information about the test zones and the points imposed for speed violations, see "Michigan's New Speed Law" in the Appendix of this Section.

## **6. Prima Facie Speed Laws**

### **a. Burden of Proof**

Normally, the plaintiff has the burden of proof to show by a preponderance of the evidence that a defendant committed a civil infraction. On the burden of proof, see page 37 of this subchapter. The evidence that will establish the plaintiff's case if the defendant presents no evidence in rebuttal is known as prima facie evidence.

### **b. Prima Facie Speed Limit**

For speed violations, the Legislature has specified by statute certain speeds in certain locations that constitute prima facie evidence of a violation. Once the plaintiff has presented evidence that the defendant exceeded a prima facie speed limit, the burden shifts to the defendant to introduce evidence that contradicts the plaintiff's case. If the defendant presents no contradictory evidence, or insufficient contradictory evidence, the court must find the defendant responsible for the speeding infraction.

### **1) Defined**

Where a statute or ordinance states that a given speed is "prima facie unlawful," evidence that the defendant exceeded this limit will establish the plaintiff's case for responsibility unless the defendant then proves by a preponderance of the evidence that his or her speed was reasonable, safe, and prudent in accordance with Michigan's basic speed law. (See *Walls v Transamerican Freight Lines*, 37 Mich App 307, 311-312 (1971), which explains the meaning of prima facie speed limits in the context of Ohio's basic speed law.)

### **2) Difference from Conclusive Speed Limit**

A prima facie speed limit differs from a conclusive speed limit in that the defendant is permitted to introduce rebuttal evidence in defense of the charge. (Recall that in the case of conclusive speed limits, the only available defense is that the officer did not accurately measure defendant's speed.)

### **3) Statutorily Prescribed Limits**

At the state level, the Michigan Legislature has provided for several prima facie speed limits in the MVC. Except in the case of school zones, these MVC speed limits need not be posted. The prima facie speed limits in the MVC are:

- 25 mph in business or residential districts; public parks. [MCL 257.627(2),(3)]
- 15 mph in mobile home parks. [MCL 257.627(4)]
- 25 mph in a school zone, under certain conditions set forth in MCL 257.627a. Permanent signs designating the school zone and the speed limit in it must be posted. Effective June 25, 1996, MCL 257.601b doubles the fine for a moving violation at a construction zone, school zone, or emergency scene.

### **4) Locally Prescribed Limits**

A local authority may establish a prima facie speed limit on a highway under its jurisdiction, if it follows the requirements set forth in MCL 257.629. If the local authority increases or decreases a prima facie speed limit from the limit set in the MVC, this increased or decreased speed must be posted to be binding.

## D. Evidence of Speeding Offenses

### 1. Facts About Speed and Velocity

Speed is a rate of travel expressed in miles per hour (mph). Police officers can calculate conservative speed estimates using one of the three methods listed below. These methods can be used only if evidence has been collected regarding length of skidmarks, tire-roadway friction interaction, and type of roadway (grade, wet or dry, etc.).

- a.  $\text{speed} = \sqrt{\text{skid distance} \times \text{drag factor} \times 5.5}$
- b. Northwestern University Traffic Institute skidmark-speed nomograph. See J.S. Baker, Simple Estimates of Vehicle Stopping Distances and Speed from Skidmarks (Northwestern University Traffic Institute, 1985), in MJI's New Magistrate Traffic Adjudication Manual as last updated.
- c. Stopping distance charts. See chart in D.2. of this subchapter, page 56.

**Drag factor** is dependent on type of vehicle. For example, the drag factor is reduced for heavy trucks and buses due to a shift in weight that occurs when these vehicles are braked suddenly. For further discussion of drag factor and other issues relating to stopping distances, see the article Simple Estimates of Vehicle Stopping Distances and Speed from Skidmarks, in MJI's New Magistrates Traffic Adjudication Manual as last updated. The skidmark-speed nomograph shown in this article is used to compute braking distance.

To be relevant, the testimony of investigating officers regarding skidmarks must link the skidmarks to a given collision, showing a connection between the tracks and the place of collision. Wilhelm v Skiffington, 360 Mich 348; 103 NW2d 451 (1960).

**Velocity** is a rate of travel expressed in feet per second (fps).

- Use the following equation to convert mph to fps:

$$\text{mph} \times 1.47 \text{ (or } 1.5) = \text{fps (1.47 is the precise multiplier; 1.5 is generally accepted.)}$$

- Use the following equation to convert fps to mph:

$$\text{fps} \div 1.47 \text{ (or } 1.5) = \text{mph}$$

## 2. Facts About Stopping Distances

The three components of stopping distances are perception, reaction, and braking times. Perception time is the amount of time required for a driver's eye to register and transmit signals to the brain about a traffic situation requiring attention. Reaction time begins when the brain has processed the incoming information and has determined that a reaction is necessary. The braking distance is the amount of roadway covered from the moment the driver's foot reacts to the impulses transmitted from the brain and makes contact with the brake pedal until the car comes to a complete stop.

### a. Perception and Reaction

Stopping distance is equal to the sum of perception distance, reaction distance, and braking distance, i.e., stopping distance = perception distance + reaction distance + braking distance. Thus, to calculate perception and reaction distance for purposes of accident analysis, the perception and reaction times must be converted to linear feet. Perception time can range from as little as .09 seconds to 2 seconds depending on the driver's circumstances at the time of the incident. Reaction time can be anywhere from 1/4 second to 3/4 second depending on the driver's degree of attentiveness. (Time provided by the Northwestern University Traffic Institute.) The following example illustrates how perception and reaction distance are calculated.

**Example:** A driver is traveling at 40 mph and the perception-reaction time is assumed to be 1.5 seconds. To determine the driver's perception-reaction distance:

- 1) Convert mph to fps:

$$40 \text{ mph} \times 1.5 = 60 \text{ fps}$$

- 2) Multiply fps by perception-reaction time:

$$60 \text{ fps} \times 1.5 \text{ seconds} = 90 \text{ feet} = \text{perception-reaction distance.}$$

### b. Braking Distance

To calculate braking distance, use the following equation:

$$\text{Braking Distance} = \frac{\text{Speed}^2}{30 \times \text{Drag Factor}}$$

Speed is often a contributing factor in traffic crashes, because as a driver's speed doubles, the perception distance and reaction distance also double, but the braking distance quadruples. The following chart shows the relationship of speed to distance required to perceive, react, and brake:

	<b>25 mph (37 ft/sec)</b>	<b>50 mph (74 ft/sec)</b>	<b>75 mph (111 ft/sec)</b>
Perception Distance	28	56	84
Reaction Distance	28	56	84
Braking Distance	27	108 = (4x27)	243 = (9x27)

## **E. Right of Way or Failure to Yield Offenses**

### **1. Elements of Right of Way Offenses -- General Rules**

The Michigan Vehicle Code defines right of way as "the privilege of the immediate use of the highway." [MCL 257.53] When adjudicating right of way cases, the magistrate should generally consider:

- which driver had the lawful right of way; and,
- whether or not failure to yield right of way caused interference and evasive action to avoid an accident, or resulted in an accident.

The magistrate should disregard whether or not a collision actually occurred and which vehicle struck the other. These factors are not necessary to support a finding of responsibility.

To determine which driver has the right of way at an intersection on Michigan roads, the following general rules apply:

- The driver of a vehicle approaching an intersection shall yield the right of way to a vehicle which has entered the intersection from a different highway." [MCL 257.649(1)]

- "When 2 vehicles enter an intersection from different highways at approximately the same time, the driver of the vehicle on the left shall yield the right of way to the vehicle on the right." [MCL 257.649(2)]
- Exception: "The driver of a vehicle traveling at an unlawful speed shall forfeit a right of way which the driver might otherwise have...." [MCL 257.649(5)]

The above rules apply except as modified at through highways and otherwise as stated in the MVC. [MCL 257.649(3)] On MVC provisions regarding specific traffic conditions, see 2. on page 60.

The Michigan appellate courts have made the following statements about the general rules applicable to right of way issues:

**a. Primary Rule** [MCL 257.649(1)]

- Placek v Sterling Heights, 405 Mich 638, 669; 275 NW2d 511 (1979):

The standard of care to be adhered to by a driver having a right-of-way is the standard of reasonable or due care under the circumstances.

**b. Uncontrolled Intersections** [MCL 257.649(2)]

- Beauchamp v Olson, 42 Mich App 323, 325; 201 NW2d 677 (1972):

The favored motorist must still exercise reasonable care at intersections.

- Green v Richardson, 69 Mich App 133, 137 (1976); Diamond v Holstein, 373 Mich 74, 80; 127 NW2d 896 (1964):

A driver proceeding straight ahead on a country road intersected at right angles by another road ending in the intersection, neither way being legally favored over the other, is not required to yield first passage to the vehicle on the right; a statute which states that when two vehicles enter an intersection from different highways at approximately the same time, the driver on the left must yield the right of way to the vehicle on the right does not apply to right-angled country roads forming a "T."

- Stuck v Tice, 291 Mich 486; 289 NW 225 (1939); Strong v Kittenger, 300 Mich 126; 1 NW2d 479 (1942); MacDonald v Skornia, 322 Mich 370, 376; 43 NW2d 4 (1948):

"Normally...when two cars collide on a bright clear day at the intersection of thoroughfares of equal importance, both drivers are to blame."

- MacDonald v Skornia, 322 Mich 370, 377-378; 34 NW2d 4 (1948):

"[T]he driver of an automobile must make proper observation before entering an intersection....A driver who proceeds into an intersection without ascertaining whether traffic is approaching on the intersecting street is not excused by the fact that his view, as he approaches the intersection, is obstructed....[U]nder such circumstances...an ordinary, reasonable, prudent, and careful person would stop in a position of safety from which due observation could be made, and look to ascertain to a certainty whether another vehicle is approaching the intersection behind the obstruction...."

- Faustman v Hewitt, 274 Mich 458; 264 NW 863 (1936):

If neither highway is a through highway, the driver approaching from the right has the right of way if he or she reaches the intersection first, or if both cars enter the intersection at the same time.

#### c. **Forfeiture of Right of Way -- Unlawful Speed** [MCL 257.649(5)]

- Holloway v Cronk, 76 Mich App 577, 581; 257 NW2d 175 (1977):

The statutory provision that a speeding vehicle forfeits its right of way applies to all right of way provisions to which the vehicle might be otherwise entitled under the statute. (With an exception for through highways.)

**Exception -- Through Highways:** (A through highway that handles long distance travel may also be referred to in the cases as an "arterial" or "trunkline" highway.)

- Sabo v Beatty, 39 Mich App 560; 197 NW2d 871 (1972):

A vehicle traveling on a trunkline highway at an unlawful speed does not forfeit any right of way which it might otherwise have had. Thus, a vehicle that enters a trunkline highway from a subordinate road after stopping at a red flashing signal violated its duty to yield to oncoming traffic when it collided with another vehicle traveling on the trunkline highway at an unlawful speed.

- Noyce v Ross, 360 Mich 668, 678; 104 NW2d 736 (1960):

The driver on an arterial highway has a right to assume that drivers on subordinate highways will yield the right of way, and is not bound to anticipate negligent acts on the part of those approaching the arterial highway.

## 2. Right of Way Statutes

The above general rules regarding right of way are modified to some extent by statutes governing specific traffic conditions. (Right of way offenses are also discussed in MJJ's Traffic Benchbook, vol 1, sec 2.6. as last updated) Right of way statutes apply to the following traffic conditions:

- a. Intersections
  - 1) Uncontrolled [MCL 257.649(1)(2)]
  - 2) Signed [MCL 257.649(4)(6)(7), MCL 257.671]
  - 3) Signaled [MCL 257.612]
- b. Left turns [MCL 257.650]
- c. Emergency vehicles [MCL 257.653]
- d. Funeral procession [MCL 257.654]
- e. Pedestrians [MCL 257.612, 257.655]
- f. Using private property to avoid traffic control devices [MCL 257.611]
- g. Failure to obey school crossing guards [MCL 257.613d]
- h. Railroad grade crossings [MCL 257.667]
- i. Private drive or alley [MCL 257.652]
- j. Officers performing manual traffic direction duties [MCL 257.602, MCL 257.602a]



### 3. Case Law

The Michigan appellate courts have made the following comments regarding some of the infractions listed in 2. above:

#### a. Stop Signs [MCL 257.649(6)]

- People v McIntosh, 23 Mich App 412, 415-418; 178 NW2d 809 (1970):

A stop sign serves only to notify motorists of the approaching intersection, and does not signify the exact spot at which vehicles are required to stop where it is placed a considerable distance from the intersection. The driver of a vehicle approaching a stop intersection indicated by a stop sign that has no crosswalk or clearly marked stop line shall stop at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway. The driver in this case did not stop as required by statute at the point nearest the intersection where he stopped five feet from a stop sign which was placed 55 feet from the intersection, even though he had an unobstructed view from the place where he stopped.

- Erdei v Beverage Distribution Co, 42 Mich App 377, 380; 202 NW2d 434 (1972):

A driver who knows, or should know, that he is approaching a stop intersection may properly be charged with notice that he should stop before entering intersection even though stop sign may be down or for some reason is not showing.

- People v Jones, 132 Mich App 368; 347 NW2d 235 (1984):

Defendant in this case was unable to stop his car at a stop sign due to icy conditions, and was ticketed for a civil infraction when his car entered the intersection and struck another car. The citation was for violation of a township ordinance substantially similar to MCL 257.649(6),(8). Defendant was aware of the icy road conditions at least five minutes before the accident and could have applied his brakes earlier than he did. The district court dismissed the citation against defendant, reasoning that he had attempted to stop his car, and did not intend to violate the traffic ordinance. The circuit court affirmed the district court on appeal. The Court of Appeals, however, reversed the circuit court's decision upholding the dismissal, and ordered the district court to enter a finding of responsibility.

The Court of Appeals reasoned that intent was not an element of the civil infraction, and that the defendant's lack of intent to violate the ordinance was irrelevant to a finding of responsibility. (For other cases involving ice, see Vsetula v Whitmyer and Young v Flood in page 41 of this subchapter.)

**b. Left Turns at Intersections** [MCL 257.650]

- Donhorst v Van York, 23 Mich App 704, 709; 179 NW2d 228 (1970):

A left-turning vehicle may acquire right of way over oncoming traffic even if the traffic control device gave oncoming traffic a green light.

**c. Emergency Vehicles** [MCL 257.653]

- Grabowski v Selman, 25 Mich App 128; 181 NW2d 72 (1970); Keevis v Tookey, 42 Mich App 283, 287; 201 NW2d 661 (1972):

A driver has a right, under permission of a green light, to cross an intersection unless, by the reasonable exercise of the senses of sight and hearing, he should have noticed or heard warning to the contrary in the forms of sirens or oscillating lights.

**d. Funeral Procession** [MCL 257.654]

- Mentel v Monroe Public Schools, 47 Mich App 467, 468-469 (1973):

A special regulation relating to motor vehicles will prevail over a general one relating thereto in a case of an inconsistency between them; the statute giving a funeral procession the right of way when going to any place of burial prevails over the general statute regulating traffic by traffic-control device.

"Burial" in the statute not only means "interment", but also the act or ceremony of burying. A church where a funeral service is to be held is therefore a "place of burial" within the meaning of the statute.

**e. Pedestrians on Highways** [MCL 257.655]

- Ludwick v Hendricks, 335 Mich 633, 638; 56 NW2d 409 (1953):

"Having discovered an oncoming vehicle, it is the pedestrian's duty to keep watch of its progress and to exercise reasonable care and caution to avoid being struck by it."

- Vercruysse v Ulaga, 229 Mich 49, 53 (1924):

The rights of a driver of an automobile and of a boy riding along a paved highway are mutual and coordinate, the automobile having no superior right of way. Accordingly, the defendant was bound to respect plaintiff's rights and observe the law of the road.

- Martin v Leslie, 345 Mich 305, 309; 76 NW2d 71 (1956):

A sidewalk alongside a highway must be usable in order to make it unlawful for a pedestrian to use the highway instead of the sidewalk.

### **3. Facts About Intersections**

Intersections are the points at which major and/or minor routes converge. See MCL 257.22.

#### **a. Control Devices**

The presence or absence of traffic control devices at a given intersection is based on the combination of route types which converge at that intersection. The three route combinations are:

- 1) The intersection of two major routes. The right of way is determined by well-developed traffic engineering guidelines, and a traffic signal is used to regulate the flow of traffic.
- 2) The intersection of a major and minor route. Traffic flow on the minor route will usually be controlled by a stop sign, therefore giving the major highway the right of way.
- 3) The intersection of two minor routes. At this type of intersection, there are often no traffic control signs or devices. Therefore, it is the task of magistrates to decide traffic disputes arising out of incidents at uncontrolled intersections.

Traffic engineers decide whether or not to sign an intersection based on complaints by citizens, police or other public officials that a traffic problem exists, and traffic studies involving accident reports, volume counts and safe approach speeds.

**b. Determining Safe Speed**

Safe approach speed studies are a method of determining speeds at which vehicles may safely approach an intersection in relation to vision obstructions. This method is based on certain assumptions:

- the vehicles are in the most dangerous legal position in the roadway.
- reaction time is 1 second.
- deceleration rate is 16 ft. per second.
- driver's eye is 7 feet behind the front bumper.
- vehicle can stop 8 feet from point where roadway edges cross.

The type of intersection may dictate the case law that is applied to right of way disputes. See, e.g., Green v Richardson, 69 Mich App 133 (1976), and Diamond v Holstein, 373 Mich 74 (1964), noted above at E. 1. b. of this subchapter, page 58.

**F. Careless and Reckless Driving**

Although careless and reckless driving have similar elements, the differences between them are great. Careless driving is a civil infraction, subject to a civil fine only. Reckless driving is a misdemeanor, subject to a fine and/or imprisonment for not more than 90 days. Magistrates should thus be careful to distinguish between these two seemingly similar offenses. The key difference between them is the element of intent, as will be shown in the discussion below.

In adjudicating charges of careless and reckless driving, the magistrate should focus on the defendant's manner of driving, not the results of defendant's driving.

**1. Careless Driving****a. Defined**

MCL 257.626b, governing careless driving, provides as follows:

"A person who operates a vehicle upon a highway or a frozen public lake, stream, or pond or other place open to the general public including an area designated for the parking of vehicles in a careless or negligent manner likely to endanger any person or property, but without wantonness or recklessness, is responsible for a civil infraction."

**b. Elements**

The elements of careless driving are:

- 1) Defendant operated a vehicle on a highway, or other place listed in the statute; and,
- 2) Defendant was careless or negligent in doing so. (See also MJJ's Traffic Benchbook, vol 1, sec 2.12. as last updated.)

It is important to note that the defendant does not have to intentionally drive in a careless manner in order to be found responsible for a civil infraction under this statute. The language in the statute that excludes "wantonness or recklessness" indicates that intent to violate the statute is not an element of the offense of careless driving. A careless driver's actions are characterized by inadvertence or inattentiveness.

**c. Case Law**

The Supreme Court addressed the issue of negligence in the following case:

- Devlin v Morse, 254 Mich 113, 116; 235 NW 812 (1931):

"In any ordinary case, one cannot go to sleep while driving...without having relaxed the vigilance which the law requires, without having been negligent; it lies within [the driver's] own control to keep awake or cease from driving; and so the mere fact of...going to sleep while driving is a proper basis for an inference of negligence sufficient to make out a prima facie case." (On what constitutes a prima facie case, see burden of proof on page 37 of this subchapter.)

**2. Reckless Driving****a. Defined**

MCL 257.626, governing reckless driving, provides as follows: (See also MJJ's Traffic Benchbook, vol 1, sec 3.45 as last updated.)

- 1) Any person who drives any vehicle upon a highway or a frozen public lake, stream or pond or other place open to the general public, including any area designated for the parking of motor vehicles, within this state, in wilful or wanton disregard for the safety of persons or property is guilty of reckless driving.

- 2) Every person convicted of reckless driving shall be punished by imprisonment in the county or municipal jail for a period of not more than 90 days or by a fine of not more than \$100.00 or both.

Surrounding conditions and circumstances are very important in deciding whether a driver's conduct is reckless. What would be reckless in one location may not be in another.

#### **b. Elements**

The elements of reckless driving, a misdemeanor, are:

- 1) Defendant drove a vehicle on a highway or other place listed in the statute; and,
- 2) Defendant's driving was "in wilful or wanton disregard for the safety of persons or property."

"Willful or wanton disregard for the safety of persons or property" describes actions which go beyond the mere carelessness or negligence required for the civil infraction of careless driving. A reckless driver exhibits conscious disregard for the safety of others (Black's Law Dictionary, 5th edition, 1979). Therefore, unlike careless driving, reckless driving requires the prosecution to show intent as a required element of the offense, i.e., the driver deliberately drove in the manner alleged.

#### **c. Reduced Charge**

If the prosecution, in a plea bargain, decides to reduce the charge from reckless driving to careless driving, the misdemeanor charge must be dismissed, and another citation must be issued for a civil infraction, to which the defendant will then plead responsible. MCL 257.907(1) states that a civil infraction shall not be considered a lesser included offense of a criminal offense."

#### **d. Case Law**

Intoxication of a driver does not automatically prove recklessness, but it may be a factor. See Hindes v Heyboer, 368 Mich 561, 566-567; 118 NW2d 699 (1962); People v Marshall, 74 Mich App 523, 528; 255 NW2d 351 (1977).

The Michigan Supreme Court addressed reckless driving in the following case:

- Blasdel v Wooley, 243 Mich 3 (1928):

The fact that an automobile struck a boy who was sitting on his bicycle at the right-hand side of a street with one foot on the sidewalk, at night when the street lights were burning, did not show that the driver was wanton or reckless or guilty of gross negligence. The driver was merely careless (negligent).





## 6.2.6 Sanctions

Violations of the Michigan Vehicle Code (MVC) or local ordinances corresponding to it may be penalized by criminal, civil, and licensing sanctions, depending on the nature of the offense. Civil infractions under the MVC are penalized by the civil sanctions, which can involve a fine, or participation in an education, rehabilitation, or treatment program. The determination of responsibility for a civil infraction does not appear on the defendant's criminal record, but it may appear on his or her driving record. Licensing sanctions also apply to civil infractions.

Different penalty provisions may apply for traffic offenses defined in local ordinances. Consult these ordinances for the applicable penalties. See also the Appendix in this Section for a chart of fine, cost, and fees.

### A. Fines and Costs

#### 1. Fines

If the court finds the defendant responsible for a civil infraction, the court may order the defendant to pay a civil fine plus costs. The civil fine and costs shall be payable immediately unless permission for late payment or installments, both within a specified time period, is included in the order or judgment. [MCL 257.907(2)]

- a. The Michigan Vehicle Code contains general penalty provisions for civil infractions, which apply unless a different penalty is expressly provided for a particular offense.
- b. For most civil infractions involving noncommercial vehicles, MCL 257.907 provides for a fine of up to \$100 plus costs not to exceed \$100.
- c. For commercial motor vehicles, the maximum fine is \$250. Fines for overweight commercial vehicles may exceed \$250. [MCL 257.724(3)] The penalty may also include education, rehabilitation, or a treatment program.
- d. The Michigan Vehicle Code sets forth the following schedule of maximum fines for certain civil infractions:
  - 1) **No insurance/No proof of insurance** — not more than \$50 plus costs. [MCL 257.328(1)]
  - 2) **Handicap parking violations** — not less than \$100 or more than \$250 plus costs. [MCL 257.674(1)(s)]

- 3) **Child restraint violations** — not more than \$10 plus costs. [MCL 257.710d]
  - 4) **Safety belt violations** — the civil fine and costs shall be \$25. [MCL 257.710e]
  - 5) **Civil infractions that occurred while driving a commercial motor vehicle**— the civil fine shall not exceed \$250 plus costs. [MCL 257.907(3)]
  - 6) **Civil infractions that occurred in a work zone, school zone, or an emergency scene** — the fine is double the fine otherwise prescribed for that violation. [MCL 257.601b]
  - 7) **Failure to stop for school bus** — the civil fine shall be not less than \$100 or more than \$500 plus costs. [MCL 257.907(2)]
- e. The Michigan Vehicle Code further sets out a schedule establishing the minimum fine for violating the maximum speed limit on a limited access freeway that has a maximum speed limit of 55 miles per hour or more: [MCL 257.629c(1)]
- 5 to 5 mph over the limit — \$10
  - 6 to 10 mph over the limit — \$20
  - 11 to 15 mph over the limit — \$30
  - 16 to 25mph over the limit — \$40
  - 26 mph and over — \$50
- However, this schedule does not apply to a person driving a passenger vehicle drawing another vehicle or trailer with combined weight of more than 750 lbs, having 2 wheels or less. It does not apply to a trailer coach with brakes more than 26 feet in length. It does not apply to a truck with gross weight of 10,000 lbs. or more. And it does not apply to a person driving a school bus. [MCL 257.629c(2)]
- f. The civil fine imposed for a violation of the Michigan Vehicle Code or any other state statute “shall be exclusively applied to the support of public libraries and county law libraries — .” [MCL 257.909]
- 1) The civil fine imposed for a violation of a county, city, township, or village ordinance substantially corresponding to the Michigan Vehicle Code shall be paid 1/3 to the support of the political subdivision whose law was violated and 2/3 to the county in which the political subdivision is located, in districts of the first and second class. However, districts of the third class may agree to a different distribution among the political subdivisions of that district. [MCL 600.8379]

- 2) Civil fines for civil infraction ordinance violations involving commercial vehicles shall be paid 30% for the support of libraries, and 70% to the political subdivision whose ordinance was violated.
- 3) The court may not increase a scheduled civil fine because the defendant requested a hearing. [People v Courts, 401 Mich 54; 257 NW2d 101 (1977) and People v Bogedain, 185 Mich App 349; 460 NW2d 328 (1990)]

A state police officer will almost always issue a civil infraction under state law. A local municipal police officer will almost always issue a civil infraction under a local ordinance, if there is one, unless policy within the local municipality dictates otherwise. Obviously, it is an advantage to the local municipalities to have citing officers issue civil infractions under the local ordinance, rather than the state statute because both the civil fine and costs go to the support of the municipality, rather than to the support of libraries.

- g. A civil fine ordered to be paid under MCL 257.907(2) or (3) shall not be waived unless costs are waived. [MCL 257.907(4)]

## 2. Costs

The statute regarding the assessment of costs in civil infraction cases appears to limit costs to expenses, direct and indirect, to which the plaintiff has been put in connection with the civil infraction, excluding expenses to support the day-to-day operations of the court. [MCL 257.907(4); MSA 9.2607(4), Board of Library Commissioners of the Saginaw Public Libraries v Judges of the 70<sup>th</sup> District Court, 118 Mich App 379, 387-388 (1982)]

- a. Costs shall not be ordered in excess of \$100. Except as otherwise provided by law, costs shall be payable to the general fund of the plaintiff (the district control unit). [MCL 257.907(4)]
- b. The court costs imposed for a violation of a county, city, township, or village ordinance substantially corresponding to the Michigan Vehicle Code shall be paid 1/3 to the support of the political subdivision whose law was violated and 2/3 to the county in which the political subdivision is located, in districts of the first and second class. However, districts of the third class may agree to a different distribution among the political subdivisions of that district. [MCL 600.8379]

### 3. Schedule of Civil Fines and Costs

The State Court Administrator annually publishes and distributes to each district court a schedule of recommended ranges of civil fines and costs for first-time civil infractions. The schedule is not binding on the courts; it is intended as a normative guide for judges and district court magistrates and as a basis for public evaluation for disparities in the imposition of civil fines and costs throughout the state. (See Michigan Court Administration Reference Guide, Section 6 Appendix)

The state court administrator expects the individual district courts to prepare their own schedule of civil fines and costs, taking into account the various factors within their court affecting costs. Additional costs resulting from formal or informal hearings, multiple appearances, enforcement proceedings for non-appearance, or failure to pay fines and costs, should be computed and added, as applicable, by the individual courts.

If the court does establish a schedule, it shall be prominently posted and readily available for public inspection. It does not have to include all civil infractions and the schedule may exclude cases on the basis of a defendant's prior record of civil infractions or traffic offenses, or a combination of civil infractions and traffic offenses.

In People v Courts, 401 Mich 57, 61-62, 257 NW2d 101 (1977), the Michigan Supreme Court held that when a district court adopts a scheduled fine system for specific traffic offenses, it is then barred from individualizing punishment for a covered offense. In People v Bogedain, 185 Mich App 349, 460 NW2d 328 (1990), the Michigan Court of Appeals held that a defendant must be sentenced in accordance with the schedule of fines authorized by the district court. In so holding, the Court of Appeals referenced Courts.

Regardless of whether a plea is negotiated, once the district court adopts a scheduled fine system for traffic offenses, it is barred from individualizing punishment for a covered offense. Thus, the fines and costs assessed for an offense negotiated by plea cannot be different than the amount established in the court's schedule for that offense.

### 4. Time to Pay

Fines, costs, and other financial obligations imposed by the court must be paid at the time of assessment, except when the court allows otherwise, for good cause shown. [MCR 1.110] If additional time is given, the 28 day period in MCL 257.321a begins at the end of the extended period of time. In light of the 28 day period and the 14 day notice provision in the statute, the State Court Administrative Office recommends giving extensions sparingly, in cases of real, demonstrated hardship.

## **5. Mitigation or Waiver of Civil Fines and Costs**

### **a. Authority**

Under MCL 257.745(4), the magistrate has discretion to mitigate the sanctions imposed for a civil infraction in light of the circumstances presented in a defendant's admission of responsibility with explanation.

### **b. Court Policy and Restrictions**

The magistrate should consult with the district judge about the court's policies regarding mitigation of sanctions. While magistrates may consider mitigating factors and impose a lesser amount of sanctions than the schedule prescribes, they may not impose sanctions in excess of the scheduled amounts. [MCL 257.745(4), People v Courts, 401 Mich 57 (1977); People v Bogedain, 185 Mich App 349 (1990)]

Moreover, magistrates may not increase the scheduled fine because the defendant has requested an informal hearing. [MCR 4.101(F)]

### **c. Required Waivers**

In the following cases, the magistrate is required to waive the fine and costs. A waiver is not a dismissal, and where required, reporting to the Department of State must occur.

- 1) Failure to have a driver's license in possession (MCL 257.311), upon certification by a law enforcement agency that the defendant, prior to the appearance date on the citation, produced a license that was valid on the date the violation occurred. [MCL 257.901a]
- 2) Equipment violations under MCL 257.683, upon receipt of certification by a law enforcement agency that repair was made before the appearance date on the citation. [MCL 257.907(9)]
- 3) Violations of the mandatory child restraint law (MCL 257.710d), if the offender, before the appearance date on the citation, supplies the court with evidence of acquisition, purchase, or rental of a child seating system meeting the law's requirements. [MCL 257.907(12)]

- 4) Failure to produce or sign registration certificate (MCL 257.223), upon certification by law enforcement agency that the defendant, prior to the appearance date on the citation, produced a certificate that was valid on the date the violation occurred. [MCL 257.907(15)]
- 5) No proof of insurance violations under MCL 257.328(1), if the offender, before the appearance date on the citation, supplies the court with proof of insurance valid on the date of the violation. The court **shall not** assess any fine or cost or judicial system assessment but may assess up to \$25 insurance fee payable to the court funding unit. The court **shall not** abstract the violation to the Department of State. [MCL 257.907(16)]

**d. Abstract**

The magistrate's mitigation or waiver of fines and costs does not amount to a dismissal of the citation. Thus, if the infraction is one that must be put onto a defendant's driving record, the court must still send an abstract of the judgment to the Secretary of State upon a finding of responsibility, regardless of the sanctions imposed. On judgments that must be abstracted, see E. and F. of this subchapter, page 77.

**B. Assessments**

The following amounts shall also be assessed:

1. **No Proof of Insurance** — \$25 for each offense where the defendant provides proof of insurance before the appearance date on the citation that is valid on the date of the violation. The assessment is deposited to the court's funding unit. [MCL 257.328]
2. **Justice System Assessment** — \$40 for each civil infraction violation except a parking violation or if fine and costs are \$10 or less.

The assessments are levied to the state treasury who shall deposit the revenue into the Justice System Fund. These amounts are not considered civil fines or costs.

**C. Treatment, Education, and Rehabilitation Programs**

In addition to the civil fine and costs, the defendant may be ordered to attend and complete a program of treatment, education, or rehabilitation. [MCL 257.907(5)]

The court may not place the defendant on probation for a civil infraction. [People v Greenlee, 133 Mich App 734, 736-737; 250 NW2d 313 (1984)]

## D. Licensing Sanctions

Defendants who fail to pay the fine for a traffic offense are subject to license suspension and other sanctions. Licensing sanctions for violations of the MVC may involve suspension, revocation, or restriction of the defendant's driver's license. Such sanctions are imposed by the Secretary of State. The court may proceed under MCL 257.908.

### 1. Points

The finding of responsibility is entered on defendant's driving record. Points may also be assessed according to the schedule prescribed by statute. Assessing points is a mandatory function of the Secretary of State; it is not a function of the court. [MCL 257.320a]

a. Speed violations exceeding the lawful maximum: [MCL 257.320a(1)(g), (l), (n)]

- by 16mph or more — 4 points; if in construction zone — 5 points
- by 11mph to 15mph — 3 points; if in construction zone — 4 points
- by 10mph or less — 2 points; if in construction zone — 3 points

Speed violations established by executive order issued during a state of energy emergency have the same point schedule. [MCL 257.320a(7)]

b. Notwithstanding the assessment of points above, the Michigan Vehicle Code further sets out a point schedule for violating the maximum speed limit on a limited access freeway that has a maximum speed limit of 55 miles per hour or more: [MCL 257.629c(1)]

Speed at time of violation	Points
1 to 5 mph	0
6 to 10 mph	1
11 to 15 mph	2
16 to 25 mph	3
26 mph or over	4

c. Careless driving — 3 points. [MCL 257.320a(1)(l)]

d. Disobeying traffic signal or stop sign, or improper passing — 3 points. [MCL 257.320a(1)(p)]

e. All other moving violations that are declared by statute to be civil infractions except those listed in subsections (2) & (4) — 2 points. [MCL 257.320a(1)(s)]

f. Points shall not be entered for:

- defective equipment. [MCL 257.683-.714a]
- certain bicycle, motorcycle, and moped violations. [MCL 257.658]
- wide load violations. [MCL 257.717]
- vehicle height violations. [MCL 257.719]
- vehicle towing mobile home violations. [MCL 257.719a]
- identification requirement violations for trucks, tractors, towing vehicles, and platform bed wrecker road service. [MCL 257.723]

[MCL 257.320a(2), (4)]

h. The following violations are not abstracted to the Secretary of State, therefore, there are no points assessed: [MCL 257.732(16)(a-e)]

- parking or standing violations
- nonmoving violations that are not the basis for the Secretary of State's suspension, revocation, or denial of a driver's license
- registration or certificate of title violations that are not the basis for the Secretary of State's suspension, revocation, or denial of a driver's license
- pedestrian, passenger, or bicycle violations
- safety belt violations
- no proof of insurance when proof is provided by the due date showing insurance was valid on the date of the offense

i. If more than 1 conviction, civil infraction determination results from the same incident, points shall be entered only for the violation that receives the highest number of points under this section. [MCL 257.320a(5)]

## **2. License Suspension**

The court may not suspend the defendant's driver's license for a civil infraction. [People v Greenlee, 133 Mich App 734, 736-737 (1984)]

A person shall be guilty of a misdemeanor if he or she fails to answer a citation, fails to appear, or fails to comply with an order or judgment issued for a violation of a civil infraction, or for a criminal traffic violation, within the time prescribed by the court. In addition, the Secretary of State shall suspend the person's driver's license until all matters relating to the violation or the noncompliance are resolved, including payment of all fines, costs, assessments, and a driver license requirement fee.



**E. Abstract****1. Authority**

All findings of responsibility arising from violations of the MVC or a local ordinance corresponding to the MVC must be abstracted except violations articulated in MCL 257.732. [MCL 257.732(16)]

**2. Process**

Within 14 days after the entry of a reportable civil infraction determination the court shall prepare and immediately forward to the Secretary of State an abstract of the court record. The court clerk is responsible for abstracting such judgments electronically (or Secretary of State form DS-1-22). The abstract must be certified by signature, stamp, or facsimile signature to be true and correct. [MCL 257.732(2)] The abstract must include all of the following:

- a. name, address, and date of birth of the person charged or cited;
- b. license number, if any;
- c. date and nature of the violation;
- d. type of vehicle driven at the time of the violation;
- e. date of conviction, finding, forfeiture, judgment, or determination;
- f. whether bail was forfeited;
- g. any license revocation, restriction, suspension, or denial ordered by the court; and
- h. other information considered necessary to the Secretary of State.

**F. Sanctions Imposed by Secretary of State**

The Secretary of State enters the finding of responsibility for a civil infraction on the defendant's driving record, and assesses points based on the schedule in MCL 257.320a. Accumulation of excessive points on a defendant's driving record may result in licensing sanctions imposed by the Secretary of State. [MCL 257.320]

Assessing points is not the court's function; only the Secretary of State may perform this duty. For a chart explaining the point assessment for speed violations, see "Michigan's New Speed Law" in the Appendix of this section.

## **G. Court-Imposed Licensing Sanctions**

Imposition of licensing sanctions is the responsibility of the Secretary of State.

## **6.2.7 Appeals**

### **A. Authority**

Either party who is dissatisfied with the magistrate's decision after an informal hearing may appeal the decision, and have the case reheard at a formal hearing before a district judge. The formal hearing on appeal is held de novo, meaning that the judge will hear the case as if for the first time. No consideration will be given to evidence or testimony from the informal hearing. [MCR 4.401(D)]

An appeal following an informal hearing is a matter of right, and must be asserted in writing, within 7 days after the decision, on a form to be provided by the court. The appeal will result in a de novo hearing. [MCR 4.101(G)(2)]

There is no appeal of right from an admission of responsibility. However, within 14 days after the admission, a defendant may file with the district court a written request to withdraw the admission, and must post a bond as provided in MCR 4.101(G)(1)(a). If the court grants the request, the case will be scheduled for either a formal hearing or an informal hearing, as ordered by the court. If the court denies the request, the bond may be applied to the fine and costs. [MCR 4.101(G)(3)]

### **B. Process**

The party appealing must request an appeal in writing within 7 days of the magistrate's judgment on Form CIA 05, Claim of Appeal of Right. A defendant who appeals must post an appeal bond equal to the fine and costs imposed at the time the appeal is taken. A defendant who has paid the fine and costs is not required to post a bond.

If a defendant who has posted a bond defaults by failing to appear at the formal hearing, or if the appeal is dismissed or the judgment is affirmed, the bond may be applied to the fine and costs. A plaintiff's appeal must be authorized in writing by the prosecutor; no bond is required, however. [MCR 4.101(G)(2)]

### **C. Conviction Reversed on Appeal**

MCL 257.732(18) directs, when a conviction is reversed on appeal, the person whose conviction was reversed is required to serve a certified copy of the order on the Department of State. SCAO recommends, however, that when the appeal is heard in the district court, the court should take responsibility for the abstract.

If the conviction was abstracted prior to the filing of the claim of appeal, the court should flag the file for followup after the appeal hearing. If the appeal results in a judgment different from the original, the clerk should send a corrected abstract or remove the conviction, whichever is appropriate.

If the case is appealed to circuit court, the district court should submit the conviction abstract to the Department of State and require the appellee to take any subsequent action.

## **6.2.8 Non-Compliance with Judgments**

### **A. Late Penalty and Collection**

Under MCL 600.4803, a defendant who fails to pay a judgment within 56 days after it is due is subject to a late penalty equal to 20% of the amount owed the court. The court is required to notify the defendant of the potential late fee if a judgment is not satisfied. To collect judgments that are 180 days or more in arrears, the district court and its funding unit may enter into an agreement with the Department of Treasury under MCL 12.131 through MCL 12.140, assigning delinquent accounts to the Department of Treasury for collection. The Department will collect the amount owed by offsetting tax refunds or other payments due from the state to the defendant.

### **B. Sanctions**

Defendants who fail to pay a judgment entered after a default or finding of responsibility are guilty of a misdemeanor, and may be subject to criminal prosecution at the discretion of the district judge or prosecutor. [MCL 257.321a(1)] Additionally, such defendants face the following possible civil sanctions:

- license suspension. See MCL 257.907(11).
- contempt of court proceedings. See MCL 257.907(11) and MCL 257.908.
- civil process to collect the judgment. See MCL 257.907(10).

#### **1. License Suspension**

##### **a. Notice**

MCL 257.321a(2) governs the procedures for license suspension when a defendant has failed to comply with a judgment.

- 1) 28 days or more after noncompliance with the judgment, the court initiates license suspension proceedings by sending SCAO Approved form CIA 03, 14 Day Notice, to the defendant.
- 2) This notice informs the defendant that if he or she does not comply with the judgment within 14 days, the court will inform the Secretary of State, who will suspend the defendant's license. The suspension will remain in effect until both of the following occur:

- the court informs the Secretary of State that the defendant has appeared before the court and that all matters relating to the violation or to the noncompliance are resolved; and,
- the defendant has paid the court a \$25 driver's license reinstatement fee.

**b. Applying Licensing Sanctions**

Different license suspension rules apply to the following types of cases:

- 1) The court shall not inform the Secretary of State to suspend a defendant's driver's license for failure to comply with a judgment involving the parking or standing of a vehicle, or a pedestrian, passenger, or bicycle violation. [MCL 257.321a(5)]
- 2) The court shall give 10 day's notice to appear in cases where the defendant has failed to answer 2 or more parking citations pertaining to handicapper parking, or 6 or more illegal parking citations.

If the defendant fails to appear in response to the 10 day notice, the court will inform the Secretary of State. [MCL 257.321a(6)] Upon receipt of such information from the court, the Secretary of State will not issue a license to the defendant or renew the defendant's license until the court informs the Secretary that the defendant has resolved the citations and paid a \$25 driver's license reinstatement fee. [MCL 257.321a(7)]

**2. Civil Contempt Proceedings, Default as Civil Contempt**

The court may respond to a defendant's noncompliance with judgment by initiating civil contempt of court proceedings under MCL 257.908. This decision is made by the district judge and not the magistrate. The prosecutor may also request contempt proceedings against the defendant.

Civil contempt proceedings begin when the court sends the defendant either Form CIA 06, Order to Show Cause, or issues a Bench Warrant (Form MC 229) signed by the judge. If the defendant fails to appear, or if the court finds the defendant intentionally refused to obey the court order, it may jail the defendant until the matter is resolved.

### 3. Civil Process to Collect Judgment

The state or locality that issued the citation may decide to collect the judgment using the civil remedies in MCL 600.4001 through MCL 600.4065 and MCL 600.6001 through MCL 600.6098. The magistrate does not make the decision to use these remedies. Among these remedies are:

- garnishment of wages;
- attachment of property; and,
- levy and execution.

To collect judgments that are 180 days or more in arrears, the district court and its funding unit may enter into an agreement with the Department of Treasury under MCL 12.131-12.139, assigning delinquent accounts to the Department of Treasury for collection. The Department will collect the amount owed by offsetting tax refunds or other payments due from the state to the defendant.

**Note:** Under MCL 600.8403, a defendant who fails to pay a judgment within 56 days after it is due is subject to a late penalty equal to 20% of the amount owed.





### **6.3.1 Checklist for Admission of Responsibility with Explanation; Appearance in Person or by Representation**

- ☐ Schedule the defendant's appearance.
- ☐ Prepare for the explanation.
  - ✓ Prepare Hearing Room.
  - ✓ Examine case file for completeness. The case file will contain the court copy of the citation. It also may contain a copy of the police accident report, the defendant's driving record, previous correspondence, or, if the defendant is an out of state driver, the bond card or driver's license given as security under MCL 257.749; MSA 9.2449. On out-of-state drivers, see subchapter 6.21, C, page 8 for minimum standards.
  - ✓ Check for material defects. See subchapter 6.2.2, B, page 12 for minimum standards.
  - ✓ Verify the defendant's identity, by asking the person before you whether he or she is the individual named on the citation, or whether he or she is representing the individual named on the citation.
  - ✓ Read the charge(s) from the citation, and ask whether defendant understands the charge(s). If defendant does not fully understand, explain further to make the charge(s) clear. See subchapter 6.2.2, B, page 13 for minimum standards.
  - ✓ Explain possible responses to the charge(s) (admission, admission with explanation, and denial), and again ask defendant how he or she wishes to respond. Make sure defendant understands an admission with explanation will not result in dismissal of the citation; only a denial will lead to this result.
  - ✓ If defendant is charged with multiple offenses on a multi-charge citation, ask if he or she has appeared to respond to the other charges. If defendant has not appeared on the other charges, explain that a separate response is necessary for each charge.
- ☐ Determine whether defendant has admitted responsibility. See subchapter 6.2.5, A, page 37.
  - ✓ Ask for defendant's explanation.
  - ✓ Determine whether defendant is admitting facts that constitute responsibility for the infraction.

- ✓ Consult statute or ordinance that creates the infraction.
- ✓ If defendant denies responsibility, schedule a formal or informal hearing. [MCR 4.101(E)(2)] See subchapter 6.2.2, D, page 22 for minimum standards.
- ☐ Evaluate defendant's explanation. See subchapter 6.2.2, B, page 15 for minimum standards.
  - ✓ Distinguish between explanations that mitigate defendant's circumstances and justify a reduction in sanctions, and explanations that contest elements of the offense or otherwise excuse defendant from responsibility. See subchapter 6.2.5, A, 3, page 39 for a discussion on situations where defendant contests elements of the offense or offers an excuse from responsibility.
  - ✓ Decide whether to accept defendant's explanation, and consider reducing the applicable sanctions.
- ☐ Enter judgment. See subchapter 6.2.2, page 17 for minimum standards. When defendant has admitted responsibility, enter a judgment that finds defendant responsible for the citation and impose the appropriate sanction. See subchapter 6.2.6, page 69 for details on sanctions.
- ☐ Prepare order on SCAO Approved form CIA 02 (Judgment). File original judgment with the court and give copy to defendant.
- ☐ After judgment is entered, give case file to court clerk. Court clerk is responsible for preparing the judgment abstract, Form DSI-22, Abstract Report of Court Order and Record of Conviction, to be sent to the Secretary of State. See subchapter 6.2.6, D, page 74 on convictions that must be abstracted. Judgment abstracts may also be sent electronically. MCL 257.732 contains the requirements for filing judgment abstracts in civil infraction cases. The number of points assessed for a traffic violation is set forth in MCL 257.320a). See also, subchapter 6.2.6, A, 5, d, page 73 and E, page 77.
- ☐ Once day's proceedings are concluded, return all case files to court clerk.

**6.3.2 Checklist for Admission of Responsibility with Explanation; Appearance by Mail**

- ☐ Examine case file for completeness. The case file will contain the court copy of the citation, and the defendant's letter of explanation, accompanied by the defendant's signed civil infraction copy of the citation. The file may also contain a copy of the police accident report, the defendant's driving record, or, if the defendant is an out of state driver, the bond card or driver's license given as security under MCL 257.749. On out of state drivers, see also subchapter 6.2.1, C, page 19 for minimum standards.
  - ✓ Examine appearance date. If the defendant's letter of explanation is not postmarked by that date, a default judgment of responsibility may be entered. See subchapter 6.2.2, C, page 19 for minimum standards. See subchapter 6.2.3, page 25 for defaults and 6.2.8, page 81 for noncompliance with judgments.
  - ✓ Check for material defects. See subchapters 6.2.2, B, page 12 and 6.2.2, C, page 20 for minimum standards.
  - ✓ Compare contents of mailed explanation with citation. Verify that letter and citation refer to the same offense and offender and to the same time, location, and offending vehicle
  - ✓ Verify citation is signed by defendant. See subchapter 6.2.2, C, page 19 for minimum standards.
- ☐ Determine whether defendant has admitted responsibility. See subchapter 6.2.5, A, page 37. See subchapter 6.2.2, C, page 20 for minimum standards.
  - ✓ Determine whether defendant is admitting facts that constitute responsibility for the infraction and that defendant is offering an explanation in mitigation of the civil sanctions.
  - ✓ Consult the statute or ordinance that creates the infraction.
- ☐ Evaluate defendant's explanation. See subchapter 6.2.2, C, page 20 for minimum standards.
  - ✓ Decide whether to accept the defendant's explanation, and consider reducing the applicable sanctions. Where the defendant's admission with explanation is unclear or defective, either:
    - Mail notice to appear in court regarding the letter of explanation; or
    - Mail defendant a judgment of responsibility, informing him or her of right to appeal; or

- Schedule informal hearing; or
  - Send defendant a letter of non-acceptance of the admission with explanation, advising defendant to submit a revised response to the citation by a stated time deadline and informing defendant of the particular sanction that may be imposed and of the consequences of failure to reply within time deadline.
- ☐ Enter judgment. See subchapter 6.2.2, C, page 21 for minimum standards. When defendant has admitted responsibility, enter judgment that finds defendant responsible for the citation and impose the appropriate sanction. See subchapter 6.2.6, page 69 for details on sanctions.
- ☐ Prepare order on SCAO Approved form CIA 02 (Judgment). File original judgment with the court and mail copy to defendant. See subchapter 6.2.2, C, page 21 for minimum standards.
- ✓ If defendant sent payment along with his or her mailed explanation, apply payment to the fine and costs upon entry of judgment.
- ☐ After judgment is entered, give case file to court clerk. Court clerk is responsible for preparing the judgment abstract, Form DSI-22, Abstract Report of Court Order and Record of Conviction, to be sent to the Secretary of State. See subchapter 6.2.6, D, page 74 on convictions that must be abstracted. Judgment abstracts may also be sent electronically. MCL 257.732 contains the requirements for filing judgment abstracts in civil infraction cases. The number of points assessed for a traffic violation is set forth in MCL 257.320a. See also, subchapter 6.2.6, A, 5, d, page 73 and E, page 77.
- ☐ Once day's proceedings are concluded, return all case files to court clerk.

### **6.3.3 Checklist for Conducting Informal Hearings**

- ☐ Examine the case file. The contents should contain the following:
  - ✓ Court copy of citation
  - ✓ Form CIA 01, Notice to Appear
  - ✓ Form CIA 02, Judgment
  - ✓ Defendant's driving record (optional) – not to be reviewed prior to hearing
  - ✓ Police accident report (optional)
- ☐ Call the case
  - ✓ Call the parties' names
  - ✓ Ask the parties and witnesses to come forward
  - ✓ Ensure that all parties and witnesses are present
  - ✓ If the defendant is not present, initial default proceedings
  - ✓ If the citing officer is not present, dismiss infraction with prejudice or adjourn hearing, and explain the procedure to those present
- ☐ Explain the proceeding
  - ✓ Introduce yourself to those present
  - ✓ Identify the citing officer and defendant
  - ✓ Explain the purpose of an informal hearing
  - ✓ Explain the procedures (such as taking testimony, questioning, decision-making, sanctioning, and right to appeal) to be following in an informal hearing
  - ✓ Answer any questions relating to the hearing

☐ Read the charge

- ✓ Read the citation number, defendant's name, and the date, time, and location of the alleged civil infraction
- ✓ Read the applicable statutes or regulations
- ✓ Ask whether the defendant understands the charge
- ✓ If the defendant does not understand the charge, explain further
- ✓ Determine whether the defendant still intends to deny responsibility
- ✓ If the defendant admits responsibility, impose sanctions; otherwise, continue
- ✓ Ask officer and defendant if they are ready to proceed

☐ Administer the Oath

- ✓ Swear in all parties and witnesses at once
- ✓ Ask all present to be seated

☐ Take evidence

- ✓ Request and take the plaintiff's (citing officer's) testimony
- ✓ Request the plaintiff's witnesses' testimony
- ✓ Identify the witnesses' relationship to the case
- ✓ Take the witnesses' testimony
- ✓ If the defendant has questions, direct them to the officer. (To maintain control, do not allow the defendant to question the officer directly.)
- ✓ Request and take the defendant's testimony.
- ✓ Request the defense witnesses' testimony

- ✓ Identify the witnesses' relationship to the case
- ✓ Take the witnesses' testimony
- ✓ If the officer has question, direct them to the defendant. (To maintain control, do not allow the officer to question the defendant directly.)
- ✓ If necessary, determine additional facts by questioning the citing officer, the defendant, and the witnesses
- ☐ Decide the case
  - ✓ Recite the facts not in dispute
  - ✓ Give and explain your decision regarding the disputed facts
  - ✓ State your decision (responsible as charged, responsible for a lesser included offense, not responsible)
  - ✓ Give the reasons for your decision
- ☐ Impose sanctions

**If you found the defendant not responsible;**

- ✓ Advise defendant of plaintiff's right of appeal
- ✓ Dismiss all parties and witnesses
- ✓ Ensure that all clerical work connected with the case will be completed

**If you found the defendant responsible;**

- ✓ Advise defendant of right of appeal
- ✓ Dismiss the citing officer and witness
- ✓ Review the defendant's driving record (optional)

- ✓ Determine what sanctions will be imposed
- ✓ Impose the sanctions and inform the defendant
- ✓ Determine whether the defendant can pay the civil fines and costs
- ✓ If the defendant cannot pay, make alternate arrangements
- ✓ Ensure that Form CIA 02, Judgment, is completed
- ✓ Ensure that a copy of the judgment is handed to defendant
- ✓ Dismiss the defendant
- ☐ Complete case processing
  - ✓ Ensure that the records of your magisterial activity are updated
  - ✓ Call the remaining cases (repeat the above steps)
  - ✓ Ensure that a Form DS-1-22, Abstract Report of Court Order and Record of Conviction, is completed for each defendant found responsible for an offense that must be abstracted.



### 6.3.4 Script for Informal Hearings

The following contains recommended language which a magistrate may use while conducting an informal hearing. The steps below are based on the discussion in subchapter 6.2.4, pages 29 through 35.

- **Call the Case**

“Would Officer Howell and Mr. Bay please come forward? Do either of you have any witnesses with you today? Will you both please take a seat?”

- **Explain the Proceeding**

“I am Magistrate Smith for the 100<sup>th</sup> District Court in Whiting. Are you Officer Howell and are you Mr. Bay? We are here for the purpose of an informal hearing. As magistrate, I will preside over this hearing. Based on the evidence, testimony, and application of the appropriate law, I will render a decision. My decision will be a judgment of whether Mr. Bay is responsible or not responsible for the alleged civil traffic violation. I will now describe the informal hearing process.

Officer Howell will have the first opportunity to testify as to the reasons and circumstances that caused him to issue the traffic citation. When he has concluded his testimony, Mr. Bay, it will be your opportunity to testify as to what happened and to provide any defense you have concerning this alleged infraction. I reserve the right throughout the hearing to ask either of you questions for purposes of discovering points of fact or clarifying issues raised. I will arrive at my judgment and determine whether or not Mr. Bay is responsible, based on a preponderance of the evidence. Officer Howell or Mr. Bay, either of you may appeal my decision, in which case a formal hearing would be held before a judge.”

- **Read the Charge**

“Civil traffic infraction No. T13574 alleges that on February 14, 1998, Mr. Bay was operating a Chevy Camaro on Mary Street at or near Cedar Avenue which is in the jurisdiction of Whiting. He was allegedly traveling 40 mph in a 25 mph zone.”

“Mr. Bay, do you understand the charge against you? Do you wish to deny responsibility of the charge and continue with this hearing?”

“Are you both ready to proceed?”

- **Administer the Oath**

“Will you each (or all parties and their witnesses) please stand and raise your right hand? Do you swear or affirm the information that you are about to give in this matter will be the truth and nothing but the truth?”

- **Take Testimony**

“Officer Howell, you may now testify.”

*After the officer’s testimony is presented, you may ask if there is any additional information that the officer wishes to add. You should then follow with testimony from the officer’s witness(es).*

“Mr. Bay, the officer’s side of this case is momentarily concluded. Do you have any questions that you wish me to ask of the officer regarding the testimony?”

*After the defendant’s testimony is presented, you may ask if there is any additional information he or she wishes to add. You should then follow with testimony from the defendant’s witness(es).*

“Officer Howell, do you have any questions that you wish me to ask of Mr. Bay regarding this testimony?”

- **Decide the Case**

“The defendant has agreed that he was traveling on Mary Street on February 14, 1998. The charge was that Mr. Bay was driving 40 mph in a 25 mph posted speed zone.”

“The court finds the defendant not responsible for driving 40 mph in a 25 mph zone. My reasons for finding Mr. Bay not responsible are the following. First, Officer Howell testified that he was using traffic radar that day and that he had not attended an MLEOTC radar operator training school. He also testified that he had not verified the unit when he came on duty. These factors are the basis for my finding the defendant not responsible. If the officer reads the People v Ferency decision by the Court of Appeals on traffic radar, he will find the recommendations by the Michigan Speed Measurement Task Force that address the issue I just raised. I suggest that the officer discuss these recommendations with his department to prevent the court from having to dismiss radar tickets in the future.”

### **6.3.5 Worksheet for Informal Hearings**

The following worksheet may be used to document testimony related to each element of the offense during the informal hearing. See subchapter 6.2.4, page 29 for a discussion.

Defendant:

Charge:

Plaintiff:

Code:

Case Number:

TESTIMONY:

FACTS IN DISPUTE:

FACTS:

LAW:

DECISION:

State the question that must be answered:

Note: The plaintiff has the burden of proof.



### **6.3.6 Explanation About Informal Hearings**

- **What is an informal hearing?**

An informal hearing is a court proceeding held to decide whether you committed and whether you are responsible for the traffic offense with which you were charged. It is your opportunity to defend yourself, to ask questions, and to have witnesses testify in your favor. The testimony is under oath but the hearing is much less formal than a trial.

- **How is the hearing different from a trial?**

The magistrate, rather than the district judge, usually presides over the hearing. Neither side may be represented by an attorney. There is no jury and no court reporter. The magistrate's final decision will be based on a preponderance (a 51 to 49 percent majority) of the evidence, not on proof beyond a reasonable doubt. In general, the hearing will be less formal than a trial.

- **How do I defend myself at the hearing?**

You may testify on your own behalf, have witnesses testify on your behalf, and ask questions of the witnesses against you. It is expected that any questioning will be concise, courteous, and not argumentative. You should also present any documents or other physical evidence you might have that supports your case. Remember that the hearing is your "day in court," so come prepared. Have your defense and questions ready.

- **How do I get my witnesses to appear?**

You may ask witnesses to come in voluntarily, or if necessary, you may use the subpoena power of the court to obtain their attendance. Subpoena forms may be obtained from the court clerk.

- **Must I pay witnesses for appearing?**

Yes, if you are the party ordering the attendance of the witness. Check with the court clerk to find out current witness fee amounts.

- **May the citing officer bring witnesses?**

Yes.

- **What are the possible outcomes of the hearing?**

You may be found not responsible, responsible, or responsible for a lesser infraction than the one charged.

- **What happens if the citing officer fails to appear?**

If the officer does not appear, the case will be either adjourned (postponed), or dismissed “with prejudice” which means you are not responsible for the offense charged and cannot be charged again in connection with the same incident.

- **What happens if I fail to appear?**

If you fail to appear, the court will enter a default judgment against you. This means the court will automatically find you responsible for the infraction charged, set the fine and costs, and mail you a judgment notice requiring you to pay. If you do not pay the judgment within 28 days, the court will send you a 14 day notice. If you do not pay within 14 days of receiving the notice, your driver’s license may be suspended by the Secretary of State and the court may issue a warrant for your arrest.

- **What are the penalties if I am found responsible?**

The maximum fine is \$100 or \$250 if operating a commercial motor vehicle. In addition, you must pay court costs to cover such expenses (not to exceed \$100) as the citing officer’s call-in-time and other fees if required by law. The magistrate may also require you to attend a program such as driving school if it is necessary to make you a safer driver.

- **What about violation points?**

Points are assessed by the Secretary of State’s office when it receives notice from the court that you committed a moving traffic offense. The magistrate who finds you responsible cannot adjust the number of points assessed against you.

- **Do I have a right to appeal?**

If you are found responsible by the magistrate after an informal hearing, you have the right to appeal for a formal hearing before the district judge. If the judge finds you responsible after a formal hearing, you have the right to appeal again to circuit court.

- **How do I appeal the decision made at an informal hearing?**

Within 7 days of the judgment, you must complete an appeal form and file it with the court, together with an appeal bond equal to the fine and costs imposed by the magistrate. You do not have to pay a filing fee for the appeal.

- **What if I have further questions about informal hearings?**

Ask any court employee. He or she will answer your question or find someone who can. There is one exception: they cannot give you legal advice.

[MC 216 - 14 Day Notice, Traffic](#)

[DC 223 - Plea by Mail](#)

UC-01a - Uniform Law Citation

[CIA 01 - Notice to Appear, Civil Infraction](#)

[CIA 02 - Judgment, Civil Infraction](#)

[CIA 03 - 14 Day Notice, Civil Infraction](#)

[CIA 04 - Motion to Set Aside Default Judgment, Civil Infraction](#)

[CIA 05 - Claim of Appeal of Right/Request to Withdraw Admission, Civil Infraction](#)

[CIA 06 - Order to Show Cause, Civil Infraction](#)

[CIA 07-JIS - Default Judgment, Civil Infraction](#) (post card version generated by system)





## APPENDIX 6

Michigan's New Speed Law

Traffic Civil Infraction Fine, Cost, Fees



## Michigan's New Speed Law

Public Act 320 was effective June 25, 1996. It added §60 1b to the Michigan Vehicle Code, requiring courts to double fines for moving violations at construction zones, school zones, and emergency scenes. It also amended §628 to increase the speed limit on most freeways in the state to 65 mph, and to establish five 70 mph test zones. The five test zones are: 1) I-75 from Standish north of Bay City to Sault Ste. Marie, with the exception of the Mackinac Bridge; 2) U.S. 131 from Grand Rapids to Cadillac; 3) I-96 from Muskegon to Lansing; 4) I-69 from the Indiana border to Port Huron, except for area around Flint; and 5) I-94 from Mt. Clemens to Port Huron. A study will be completed by December 15. At that time, a decision will be made on increasing the speed limit to 70 mph on other state roads.

Under an amendment to §629c of the Vehicle Code, the amount of points imposed for a violation on a limited access freeway has changed. The chart below compares the amount of points imposed for each type of speed violation, as reported under the offense codes used by the Secretary of State. Speed violations under the Secretary of State's offense code 2100 involve offenses on a limited access highway. Offense code 2000 involves speed violations when 2100 does not apply. Trucks (10,000 pounds or more) passenger vehicles drawing a trailer or another vehicle, and school busses are not to be reported using code 2100 (limited access speed), even if an offense occurs on a limited access freeway. They must be reported using offense code 2000 (speed).

OFFENSE CODES 2000- Speed *** 2100 - Limited Access Speed																											
NUMBER OF MILES PER HOUR EXCEEDING SPEED LIMIT																											
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26+	
2000	2 Points										3 Points					4 Points											
2100	0 Points					1 Point					2 Points					3 Points										4 Points	



# TRAFFIC CIVIL INFRACTION FINE, COST, FEES

Revised May, 2004

Description	Amount	Authority
Fine		
<u>Minimum</u>	None	
Speeding on Limited Access Freeway posted 55 mph or more:		MCL 257.629c
1-5	\$10.00	
6-10	\$20.00	
11-15	\$30.00	
16-25	\$40.00	
25+	\$50.00	
Handicapped Parking	\$100.00	MCL 257.907(2)
Forged, copied Handicapped Certificate	\$250.00	MCL 257.675(16)(c)
Fail Stop for School Bus	\$100.00	MCL 257.907(2)
<u>Maximum Fine</u>	\$100.00	MCL 257.907(2)
	\$250.00 on CMVs	MCL 257.907(3)
Handicapped Parking	\$250.00	MCL 257.907(2)
Child Restraint	\$10.00	MCL 257.907(2)
No Insurance/No Proof of Insurance	\$50.00	MCL 257.907(2)
Fail Stop for School Bus	\$500.00	MCL 257.907(2)
Violation of MCL 257.319g	\$10,000.00	MCL 257.907(3)
<u>Mandatory Fine &amp; Cost</u>		
Seat Belt	\$25.00	MCL 257.907(2)
Cost, if assessed. <sup>1</sup>	\$100.00 maximum	MCL 257.907(4)
Fees		
Justice System Assessment <sup>2</sup>	\$40.00	MCL 257.907(14)
No Insurance/No Proof of Insurance	\$25.00	MCL 257.328(3)
Driver License Reinstatement Fee	\$45.00	MCL 257.321a
Civil Contempt	\$10.00/day	MCL 257.908(5)
Cost to Compel Appearance	As determined by the court	MCL 257.729

<sup>1</sup> Costs may be assessed only after a fine has been assessed.

<sup>2</sup> Required if Fine or Cost exceed \$10.00.

### STATE CIVIL INFRACTION FINE, COST, FEES

Description	Amount	Authority
Fine	Set by individual statute	MCL 600.8827(2)
Cost, including expenses up to the entry of judgment	\$500.00 maximum	MCL 600.8381
Justice System Assessment	\$10.00	MCL 600.8827(4)
Driver License Reinstatement Fee	\$45.00	MCL 600.8827(7)(b)
Civil Contempt	\$30.00/day	MCL 600.8829(5)
Cost to Compel Appearance	As determined by the court	MCL 600.8835

### MUNICIPAL CIVIL INFRACTION FINE, COST, FEES

Description	Amount	Authority
Fine	Set by individual ordinance	MCL 600.8727(2)
Cost, including damages & expenses up to the entry of judgment	\$500.00 maximum	MCL 600.8381
Justice System Assessment	\$10.00	MCL 600.8727(4)
Trailway Action; damages and expense of impoundment	As determined by the court	MCL 600.8733(2)
Civil Contempt	\$30.00/day	MCL 600.8729(5)
Cost to Compel Appearance	As determined by the court	MCL 600.8735
Trailway Action; Impoundment release bond	\$750.00 cash or surety	MCL 600.8733(1)